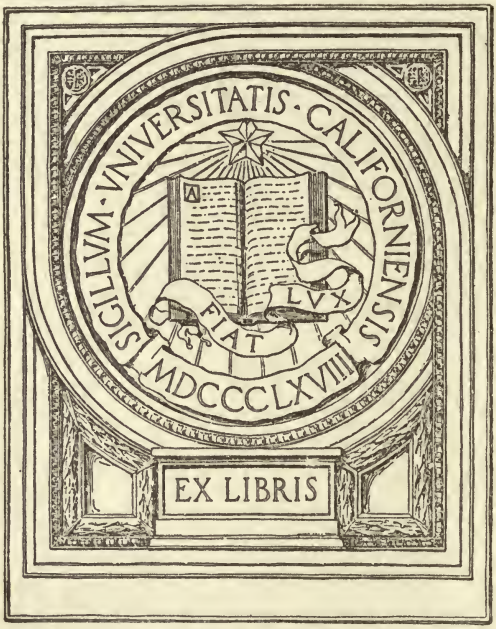
BIOGRAPHICAL NOTICE

OF

STEPHEN J. FIELD.

NOT PUBLISHED



Isabelle F. Judson

from Tunnel Hill

February 9th 1893

BIOGRAPHICAL NOTICE

OF

STEPHEN J. FIELD.

TAKEN PARTLY FROM THE RECORD OF THE FAMILY OF THE LATE REV. DAVID D. FIELD, OF STOCKBRIDGE, MASS., COMPILED BY HIS YOUNGEST SON, HENRY M. FIELD, AND PARTLY FROM DOCUMENTS IN THE POSSESSION OF DIFFERENT MEMBERS OF THE FAMILY.

NOT PUBLISHED, BUT PRINTED ONLY FOR THE USE OF THE FAMILY.

STEPHEN J. FIELD.

Now, for the first time in the history of our family, death came into the household. In the midsummer of 1815 (July 11) was born a fifth son, to whom, in honor of a venerable minister of Connecticut, was given the name of STEPHEN JOHNSON. He lived but a little over five months, dying on Christmas day of the same year. It was a bitter sorrow to the bereaved parents, and so deeply did they feel it that, when they removed to Stockbridge, the sharpest pang was the thought that they should leave that babe behind. More than thirty years afterward my father made a journey to Connecticut, to take up that little form, and bear it tenderly over the mountains, and lay it down again beside its kindred dust. This early grief consecrated the memory of that child, so that when a sixth son was born, November 4, 1816, his parents gave him the same name. He, too, was of a mould so delicate and fragile as gave little promise that he could ever reach manhood. For a time it seemed doubtful if he could live. The old dames who came around his cradle shook their heads, and told his mother that "she could never raise that child!" But her love watched him night and day—no hired attendant ever took her place—and carried him through the perils of infancy. Nothing but that incessant care saved him; so that he has always had reason to feel that, in a double sense, he owed his life to his mother.

He was not three years old when the family removed to Stockbridge, in August, 1819, and here he spent the

ten years following—the period of boyhood. In 1829 (December 2) his sister Emilia was married to Rev. Josiah Brewer, who was immediately to embark for the East, as a missionary, to promote female education among the Greeks. Her brother Dudley (who, as the eldest of the family, was always looking out for the education and advancement of his brothers) thought it would be a good opportunity for Stephen, now a boy of thirteen, to accompany his sister, to study the Oriental languages, and thus qualify himself to be a professor of Oriental literature in some college on his return. His sister was delighted at the suggestion, and as our parents gave their consent, it was decided upon. The family party sailed from New York on the 10th of December, bound for Smyrna. It had been Mr. Brewer's intention to go from there to Greece, but when he reached Smyrna he was persuaded to remain in that city as a place where he could labor for Greek education quite as effectively as in Greece itself. There were in Asia Minor at that time more Greeks than of any other nation. Accordingly he settled in Smyrna, where he remained nine years. For two and a half Stephen was in his family. During that time he visted Ephesus, Scio, Patmos, Tenos, and Ægina. He accompanied Mrs. Hill (the wife of Rev. John Hill, D. D., the well-known Episcopal missionary in Greece) from Smyrna to Athens, and there spent the winter of 1831–'32. The place was then in ruins, and, unable to find a convenient house, they lived in an old Venetian tower. So Dr. Hill himself informed me on a visit to Athens in November, 1875, when the place once destroyed had arisen from its ashes, and grown to be a large and beautiful city. While in the East young Field learned modern Greek so that he could speak it fluently, and for a time kept his journal in it. He also acquired some knowledge of Italian, French, and Turkish.

Of these years spent in the East he has always retained very vivid impressions. Living in a foreign

country, and mingling with people of another race, language, and religion, enlarged his ideas. He formed a better opinion of the Turks. In travelling with them he found that they were very attentive to their devotions, saying their prayers at sunrise, at noon, and at sunset. Often he was awakened at night by their rising to say their prayers. He had been educated in the strictest school of the Puritans, who, with all their good qualities, were not the most tolerant of religious opinions which differed from their own. Of course this child of a strict New England pastor was taught to look with horror upon the followers of the False Prophet; but for all that, he was profoundly impressed with what he saw, and could not but conclude that there must be something good in a religion which inspired such devotion.

He found that the Turks were proverbially honest in their dealings. If he went into a bazaar to inquire if a piece of coin was good, he would be asked, "Did you get it from a Turk?" If he said "Yes," that settled the point that it was good; if he said "No," they would ring it to test its genuineness. One day some gentlemen of his acquaintance were looking for a place in the country for the summer, and one was recommended to them as a quiet, orderly place, where the people were very moral—"for there was not a Christian within ten miles!" This was his first lesson in religious tolerance.

Another lesson of the same kind he learned in regard to the members of the Greek Church, with whom he often came in contact, and found that they were most exemplary in their religious duties. So with the Roman Catholics, of whom there were many in Smyrna; he saw in them a degree of devotion which was an example to Protestants. These things gradually opened his young eyes, and satisfied him that not all the religion in the world is to be found in Protestant Christendom.

An experience of a very different kind was the visitations of the plague and the cholera, by which Smyrna,

like so many other cities of the East, was often scourged. In the terrible plague of 1831 every one avoided his neighbor, as if the slightest touch carried contagion. If two men met in the street, each drew away from the other, as if contact were death. Sometimes they hugged the walls of the houses, with canes in their hands, ready to strike down any one who should approach. All papers and letters coming through the mails were smoked and dipped in vinegar before they were delivered, lest they might communicate infection. Even vegetables were passed through water before they were taken from the hands of the seller. Terrible tales were told of scenes where guests were carried away dead from the table, and servants dropped down while waiting upon it. On every countenance was depicted an expression of terror. When the plague appeared in a house, it was instantly deserted, the occupants running from it without stopping to look at anything, or to take anything with them, as if pursued by an avenging angel. Of those who were attacked nearly one-half were swept away. Few, except those who had recovered from the plague, ventured to go about the city. And it was not till the pestilence had spent its force, and their houses had been thoroughly cleansed and purified, that the affrighted inhabitants returned to their homes.

Such was the memorable plague of 1831, of which this missionary family were witnesses. Mr. Brewer remained in the city for two or three weeks after it broke out, when, for the safety of his family, he took them on board a vessel and sailed for Malta. But no sooner had they arrived than they were ordered into quarantine. So, without remaining more than two or three days, not being permitted to land, they returned to Smyrna, after an absence of a little over six weeks, when the plague had passed. On the return voyage they visited Patmos, Scio, and other islands of the Grecian Archipelago.

In the autumn of the same year Smyrna was visited with the Asiatic cholera, when there were three hundred

deaths a day. Thirty thousand people left the city and camped in the fields. During that period Mr. Brewer filled his pockets with medicines and went around in the lanes and alleys, and ministered to the sick and dying. His young brother-in-law, with his pockets filled in the same way, accompanied him in all his rounds. An extract which we have copied in our sketch of sister Emilia speaks of Mr. Brewer's intrepid devotion amid these terrible scenes.

Young Field remained in the East two years and a half, when Mr. Brewer thought it was time for him to return to America to enter college. Accordingly he sailed for home in the latter part of 1832, and entered Williams College in the fall of 1833. He graduated in 1837, with the valedictory oration—the highest honor of his class. The next spring he went to New York, and began the study of law in his brother Dudley's office. His studies were interrupted by a long illness. When he was sufficiently recovered he removed to Albany for change of scene and occupation, and for some months heard recitations of classes in the Female Academy, spending his leisure time in the office of John Van Buren, the Attorney-General of the State. After a year and a half he returned to New York city, and re-entered his brother's office, and in 1841 was admitted to the bar, and became his partner, and so remained for seven years.

The long illness thus spoken of resulted from an injury to his right knee-joint, which occurred in the city of New York in the summer of 1838. He was walking, one morning in August, down Nassau street, when he came in collision with the hub of the wheel of a small coal-cart drawn up on the sidewalk, which he had not noticed, his attention at the time being drawn to something else. The injury was thought to be slight, and, though painful, did not delay him in proceeding to his office. On the evening of that day there was some inflammation in the joint, and the pain had increased. On the follow-

ing morning he was advised to send for a physician, and did so. He did not, at the time, think that the injury would interrupt his ordinary occupations more than one day. His physician, however, gave him a large quantity of calomel, which greatly prostrated him and, instead of diminishing, increased the inflammation in his knee-joint. The result was that he was confined to his room in New York for several weeks, and was then carried on his bed to Haddam, Connecticut, where his parents resided. After some months' confinement he was able to get up, but so serious had been the injury to his knee-joint, principally, he has always thought, from the medicine taken, that he was unable to bring his right foot to the ground, and for some months he went on crutches. In the fall of the following year he was able to throw one of the crutches aside and to walk with the aid of the other. The lameness which resulted from this injury has never entirely left him. For several years it was slight, but, unfortunately, in the summer of 1882, when in California, he received an additional injury to it. He was invited by friends of Senator Casserly to act as a pall-bearer at his funeral, and he did so. The services were at the church at the corner of Dupont and California streets. After they were concluded, instead of the pall-bearers being furnished with carriages to take them to the cemetery, they were requested to walk after the hearse down California street, up Montgomery street to Market street, and along Market street for several blocks. At that time the streets of San Francisco were wretchedly paved with cobble-stones of various sizes and placed in irregular order. Whilst walking up Market street Mr. Field stepped on one of these cobble-stones, about three inches higher than its neighbors, which so wrenched his knee that he was obliged to leave the procession. For many years afterwards he was not free from pain except when asleep or occupied in some serious matter engaging his close attention. He was a great sufferer from this cause, and though

he consulted eminent surgeons, both in this country and in Europe, he obtained very little relief from their treatment or from the treatment which he has taken at different watering-places whose waters were supposed to possess healing virtues. His lameness has not, however, prevented him, at any time, from the performance of his regular judicial duties.

In the spring of 1848 he was seized with a desire to visit Europe, and, terminating his partnership with his brother, that he might be free, he went abroad, and spent the following winter in Paris. That was the year of the Revolution, when Louis Philippe was overthrown, and the government of France was passing through the stage of a Republic back to the Second Empire. While he was in the city it was visited with the cholera, whose terrible ravages recalled the cholera of Smyrna. His sister Mary joined him in Paris, and in the following spring his brother Cyrus and his wife went to Europe, and they all met in Brussels, and together travelled during the summer. The continent was still in great agitation. They were in Rome soon after the French troops had taken possession; and were in Vienna while the war was raging in Hungary, and its forces were approaching that city. They returned home in the autumn of that year.

The fall of 1849 was a stirring moment in the history of the country. The Mexican war had been brought to a close the previous year by a treaty in which California was ceded to the United States, and soon afterwards this new acquisition was discovered to be a land in the bed of whose streams and in whose hills and mountains gold was found. Nothing could be conceived more fitted to excite the imagination of young America. The picture of an empire on the Pacific, rising as it were out of the sea, presented itself as a boundless field for enterprise and ambition. No one was more prepared to catch the excitement than the young lawyer just returned from Europe. Years before his attention had been drawn to

the country bordering on the Pacific, and particularly to the bay of San Francisco. In 1845, the year before the Mexican war, his brother Dudley had written two articles for the *Democratic Review*—a political magazine of the day—upon the Oregon question, which was that of the northwestern boundary between the British possessions and the territory of the United States. In preparing them, he had examined several works on Oregon and California, and among others that of Greenhow, then recently published, and thus became familiar with the geography of the Pacific Coast. Afterwards, when the war broke out, in speaking of its probable issue, he remarked that "if he were a young man he would go to San Francisco," for he was satisfied that peace would never be concluded without our acquiring its harbor (as there was no other equally good harbor on the coast), and that, in his opinion, at no distant day a great city would rise on its borders. He offered to furnish his younger brother the means to go, and also for investment in land lying on the harbor. Some months afterwards, while Col. Stevenson's regiment was preparing to start from New York for California, his brother again referred to the subject, and suggested the idea of his going out with the regiment. But he wished to go to Europe, and so the project was deferred. But the idea thus suggested had taken possession of his mind. He was attracted by the prospect of adventure in a new country, besides the ambition of being one of the founders of a new commonwealth which it was evident would, at no distant day, rise on the Pacific Coast.

In December, 1848, while in Paris, he read in the New York Herald the message of President Polk confirming the reports of the discovery of gold in California. This recalled the suggestion of his brother, and made him almost regret that he had not acted upon it. But as he was now in Europe, he concluded to carry out his original plan of completing his tour before returning to America.

But the fire was only smothered, not extinguished, and it burst out anew when he found himself once more in his own country, being kindled afresh by the general excitement. Crowds were leaving by every steamer for the Isthmus and by every ship around Cape Horn. Thousands had crossed the plains the previous summer, or were on their way. He was not long in making up his mind. He landed in New York on the 1st of October, and on the 13th of November he left on the steamer Crescent City for Chagres, an old Spanish-American town on a river of that name, on the Isthmus of Panama, where he arrived in about a week. In company with others he took a boat and was pushed up the river by Indians to Cruces, where they engaged mules and rode over the mountain to the city of Panama. Here they found a crowd of emigrants and adventurers bound for the land of gold. They took passage for San Francisco on an old steamer named the California, which was crowded to the utmost, passengers being stowed in every nook and corner, and some without even a berth, lying on the deck. It was said there were over twelve hundred persons on board. Many carried with them the seeds of disease, contracted under a tropical sun, which, being aggravated by hardships, insufficient food, and the crowded condition of the steamer, developed as the voyage proceeded. Panama fever in its worst form broke out, and soon the main deck was covered with the sick. There was a physician attached to the ship, but he, too, was prostrated. In this extremity the young lawyer, just from New York and from Paris, turned himself into a nurse, and went from one sufferer to another, bending over the sick, and watching them as carefully as if he had been trained in a hospital. One gentleman, afterwards a lawyer of high standing in California, Mr. Gregory Yale, thought that he owed his life to this attention of his fellow-passenger, and ever after felt towards him as a brother. At last, after twenty-two days, this voyage

of misery ended; he reached San Francisco on almost the last day of the year, December 28, 1849, and went on shore between eight and nine o'clock at night.

Mr. Field landed in California with ten dollars in his pocket. He had two trunks. These were of too great weight for him to carry; so he was compelled to pay seven out of his ten dollars to have them taken to an old adobe building, where a room was secured, about ten feet long by eight wide, for thirty-five dollars a week. Two of his fellow-passengers shared it with him. They took the bed, and he took the floor. The next morning he started out early with three dollars in his pocket, and hunted up a restaurant, and ordered the cheapest breakfast to be had; it cost two dollars; so that when he began his career in California he had, as a capital to start on, exactly one dollar! But he did not abate a jot of heart or hope. In after years, when he could smile at his early fortunes, he loved to recount these first experiences.* He said:

"I was in no respect despondent over my financial condition. It was a beautiful day, much like an Indian-summer day in the East, but finer. There was something exhilarating and exciting in the atmosphere which made everybody cheerful and buoyant. As I walked along the streets, I met a great many persons I had known in New York, and they all seemed to be in the highest

* His friends in California, many of whom had been, like himself, among the pioneers of '49, were as fond of hearing as he could be of relating his adventures, and often urged him to put them on record before he and they should pass away. This he long refused. But once, when in San Francisco, he was persuaded to dictate some of them to a reporter, who took them down in shorthand, and afterwards wrote them out. In the course of successive conversations they grew into a volume, which was printed privately for his friends under the title "Personal Reminiscences of Early Days in California." It reads more like a tale of fiction than of sober reality. Though related in familiar style, as one tells a story to a group of friends, it is a thrilling narrative, full of excitement and adventure, and full also of dangers, from coming in conflict with desperate men, that could only be met with the greatest personal courage. To some of these incidents we may refer hereafter, though it can only be a passing allusion, as we must reserve what space we have to speak of his work as a legislator and a judge.

spirits. Every one in greeting me said, 'It is a glorious country,' or 'Isn't it a glorious country?' or 'Did you ever see a more glorious country?' or something to that effect. In every case the word 'glorious' was sure to come out. There was something infectious in the use of the word, or rather in the feeling which made its use natural. I had not been out many hours that morning before I caught the infection; and though I had but a single dollar in my pocket and no business whatever, and did not know where I was to get the next meal, I found myself saying to everybody I met, 'It is a glorious country.'

"The city presented an appearance which, to me, who had witnessed some curious scenes in the course of my travels, was singularly strange and wild. The bay then washed a portion of the east side of what is now Montgomery street, one of the principal streets of the city; and the sides of the hills sloping back from the water were covered with buildings of various kinds, some just begun, a few completed—all, however, of the rudest sort, the greater number being merely canvas sheds. The streets were filled with people, it seemed to me, from every nation under heaven, all wearing their peculiar costumes. The majority of them were from the States; and each State had furnished specimens of every type within its borders. Every country of Europe had its representatives; and wanderers without a country were there in great numbers. There were also Chileans, Sonorians, Kanakas from the Sandwich Islands and Chinese from Canton and Hong Kong. All seemed, in hurrying to and fro, to be busily occupied and in a state of pleasurable excitement. Everything needed for their wants, food, clothing, and lodging-quarters, and everything required for transportation and mining, were in urgent demand and obtained extravagant prices. Yet no one seemed to complain of the charges made. There was an apparent disdain of all attempts to cheapen articles and reduce prices. News from the East was eagerly sought from all new-comers. Newspapers from New York were sold at a dollar apiece. I had a bundle of them, and seeing the price paid for such papers, I gave them to a fellow-passenger, telling him he might have half he could get for them. There were sixty-four numbers, if I recollect right, and the third day after our arrival, to my astonishment, he handed me thirty-two dollars, stating that he had sold them all at a dollar apiece. Nearly everything else brought a similarly extravagant price."

His fortunes were further recruited by the proceeds of a note of over $400, which his brother Dudley had given him against a man who, having prospered in his new home, paid it promptly. As the new-comer handled the money in Spanish doubloons, he felt rich. With this start he opened an office in San Francisco, but had only received his first fee when the excitement about gold in the interior led him to abandon the city and take a steamer up the Sacramento River, then in its annual flood, to a point which, being at the junction of two rivers, the Feather and the Yuba, seemed a natural site for a town, and where already some hundreds of people had pitched their tents upon the bank. Two of the proprietors were French gentlemen, who were delighted when they found he could speak French, and insisted on showing him the town site. It was a beautiful spot, covered with live-oak trees that reminded him of the oak parks of England. He saw at once that the place, from its position at the head of river navigation, was destined to become an important depot for the neighboring mines, and that its beauty and healthfulness would render it a pleasant place for residence. Here accordingly he pitched his tent, and was to spend the next seven years.

As may well be supposed, life in this new settlement was very primitive. Besides the old adobe of the original settler, there was only one house. The new-comers slept in tents or under the open sky. But this was the least of their anxieties. The constitution of the State, adopted the previous year, was not framed by a convention convened by the authority of Congress, and, for that reason, great doubt of its validity and of legislation under its provisions was entertained by many of the immigrants. Among those who were then at the new settlement, there was no recognized official authority; indeed, there were no officers of the government created under that constitution, and there was no protection for life or property except the instinct of self-preservation which leads men to

combine to protect one another. To create something like civil order in this settlement, the first thing was to organize a temporary local government. So some of the leading settlers assembled on the evening of the 17th of January (1850), and christening the place with a name—that of Marysville, in honor of the only woman in the place, the wife of one of the proprietors of the town—they agreed to call a public meeting of citizens of the settlement the next day to consider the question of establishing a town government. Accordingly, on the following morning, the 18th of January, such public meeting was held in front of the Adobe House, the only substantial building of the place, except the one hastily thrown up the day before, and it was there resolved that a town government should be established, and for that purpose that there should be elected a town council —an *ayuntamiento* in Spanish phrase—and a first and second *alcalde* (the latter to act in the absence or sickness of the former), and a marshal; and they proceeded at once to carry the resolution into effect. In the afternoon of the same day the election took place. To the position of first alcalde Mr. Field was chosen. Under the Mexican law an alcalde was an officer of very limited jurisdiction; but in the anomalous condition of affairs in California at this time, he was called upon to exercise, and did exercise, very great powers. Mr. Field, therefore, became at once the centre of authority, around whom the elements of society could crystallize. He was the chief magistrate in the newly-formed community, and had use for all his powers, since along with the respectable, the orderly, and the law-abiding class of people there was a great number of disreputable characters—gamblers and desperadoes, the refuse of older communities—who had to be held in check with a firm hand. They soon found that there was an authority with which they could not trifle. Thus, a man was accused of having committed a robbery—of having stolen gold dust out of the tent of a

miner. He was arrested and carried before the alcalde. After hearing a statement of the alleged facts, the alcalde directed that a grand jury should be immediately summoned to consider the case, and in a very short time its members assembled, and, after hearing the evidence, reported that a burglary had been committed, and formally accused the prisoner. A petty jury was thereupon at once called, and the prisoner put upon his trial, an attorney having been first appointed by the alcalde to defend him. The trial did not last long, and the prisoner was convicted, the evidence being clear and conclusive. A portion of the gold dust stolen was found upon him. The whole proceding, from the arrest of the prisoner to his conviction, occupied only a part of a day. What should be done with the convict then became a serious subject of consideration. There was no jail to hold prisoners, and the sheriff could not be kept standing guard over him. Nor could he be sent to San Francisco but at great expense. If he had been turned over to the crowd, they would have hung him without hesitation to the nearest tree. The judgment of the alcalde was more merciful, though not less swift and effective. It was as all punishment of crime ought to be, sharp and stinging. The thief was sentenced to be publicly whipped with fifty lashes on his bare back, with a clause added that if he were found within the next two years in the vicinity of Marysville he should be again whipped. The marshal of the court immediately marched him to a tree in the public plaza and inflicted the sentence, the alcalde privately ordering a physician to be present so as to see that no unnecessary severity was practiced. That was the last seen of the fellow in that region. The Judge, in his "Reminiscences," remarks that the latter part of the sentence was unnecessary, for there was something so degrading in a public whipping that he had never known a man thus whipped who would stay at the place longer than he could help, or ever desired to return. By the

sentence inflicted the sense of justice of the community was satisfied and while no blood was shed, or hanging done, a severe public example was given.

Thus the alcalde did not bear rule in vain. A few instances of such wholesome severity quelled the spirit of lawlessness, and established order in the community. A good many bad characters hung about the place, and gambling shops were open; but deeds of violence were effectually repressed, and during the whole time that he bore rule this settlement was as peaceful as a New England village. Sometimes he had more pleasing duties than that of trying criminals and inflicting punishment. In one case a husband and wife came to him bitterly complaining of each other, and demanding an immediate divorce. Then the good alcalde forgot his office as a magistrate, and tried to interpose as a pacificator and friend, which he did with such good effect that they promised to kiss and forgive each other, and departed arm in arm, to live in peace and love forever after, amid the cheers of the large audience that had gathered by the novel proceeding at the alcalde's office.

As chief magistrate he had the general superintendence over matters affecting the public interests of the town. He had the banks of the Yuba River graded so as to facilitate the landing from steamers and other vessels. He established a night police, and kept the record of deeds of real property.

This efficient rule of the alcalde was of course but temporary. It ceased as the new State government went into operation, and its officers appeared and took the place of officials with Spanish titles and unlimited powers. The change was no doubt, on the whole, a benefit, although in some cases it was quite the contrary, as in the haste of organization some very unfit men were appointed to positions in which their power for mischief was great. Thus of the District Court, whose territorial jurisdiction embraced Yuba County, a lawyer from Texas, who was a

bully of the lowest type, was appointed judge. A drunkard, he often appeared in court in a state of intoxication, and by his vulgar and brutal manners created very general disgust. He took a hatred to Mr. Field, and even threatened personal violence, so that the latter always went armed, and the former, in consequence, confined himself to swaggering and bluster. But the annoyance did not continue long. In the fall of that year Mr. Field was elected a member of the Legislature, and secured a reorganization of the judicial district, by which this model judge was sent off to the extreme northern part of the State, where at the time there were few inhabitants and little litigation. For some years he continued on the bench, but his ungovernable passions and habits of intoxication finally led to a movement for his impeachment, when he resigned, and soon afterwards died.

The nomination to the Legislature introduced Mr. Field to a new experience. Every candidate had to make the canvass for himself; it did not do to stand upon his dignity. The people did not know him, and an Eastern reputation counted for little in the mining gulches of California. He had to mount his horse, like a Methodist circuit-rider, and ride from camp to camp, speaking to the people wherever he could find them—in the oak grove, under the shade of trees, or by the river-side, where they washed for gold. In this way he saw a great deal of the rough life of the border, and had many a novel, and sometimes a touching, experience. A single incident, which is related in the "Personal Reminiscences," is given in the note below.*

*I witnessed some strange scenes during the campaign, which well illustrated the anomalous condition of society in the country. I will mention one of them. As I approached Grass Valley, then a beautiful spot among the hills, occupied principally by Mr. Walsh, a name since become familiar to Californians, I came to a building by the wayside, a small lodging house and drinking saloon, opposite to which a lynch jury were sitting, trying a man upon a charge of stealing gold dust. I stopped and watched for awhile the progress of the trial. On an occasion of

The experience of this campaign was useful in other ways. In the mining camps he learned the rules by which the miners regulated their claims, and their relations with each other—rules which he was soon to lift into dignity by giving them the force of positive law.

The Legislature met in San José, then the capital of the State, on the first Monday of January, 1851. The Legislature of the previous year had done much, but it left much more to be done by its successor. There was an immense work on its hands in framing laws required by the conditions of the State, which had recently come into existence, but destined to a magnificent future. Here Mr.

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some little delay in the proceedings I mentioned to those present, the jury included, that I was a candidate for the Legislature, and that I would be glad if they would join me in a glass in the saloon, an invitation which was seldom declined in those days. It was at once accepted, and, leaving the accused in the hands of an improvised constable, the jury entered the house and partook of the drinks which its bar afforded. I had discovered, or imagined from the appearance of the prisoner, that he had been familiar in other days with a very different life from that of California, and my sympathies were moved towards him. So, after the jurors had taken their drinks and were talking pleasantly together, I slipped out of the building, and, approaching the man, said to him: "What is the case against you? Can I help you?" The poor fellow looked up to me and his eyes filled with great globules of tears as he replied, "I am innocent of all I am charged with. I have never stolen anything nor cheated any one; but I have no one here to befriend me." That was enough for me. Those eyes, filled as they were, touched my heart. I hurried back to the saloon, and, as the jurors were standing about chatting with each other, I exclaimed: "How is this? You have not had your cigars? Mr. Barkeeper, please give the gentlemen the best you have; and, besides," I added, "let us have another 'smile'—it is not often you have a candidate for the Legislature among you." A laugh followed, and a ready acceptance was given to the invitation. In the meantime my eyes rested upon a benevolent-looking man among the jury, and I singled him out for conversation. I managed to draw him aside, and inquired what State he came from. He replied, from Connecticut. I then asked if his parents lived there. He answered, with a faltering voice, "My father is dead; my mother and sister are there." I then said, "Your thoughts, I dare say, go out constantly to them, and you often write to them, of course." His eyes glistened, and I saw pearl-like dewdrops gathering in them—his thoughts were carried over the

Field found himself at home. As a diligent student of law for many years, he had become familiar with the Civil and Criminal Codes and the Codes of Procedure at the East, and now had opportunity to turn to account the results of long study, aided by experience and observation. He at once took a leading position in the Legislature, and, it is said by those familiar with the history of that body, did more towards framing the laws of California than any other individual.

He at once directed special attention to legislation for the protection of miners. California was a mining State. The vast immigration from the East had come in search

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mountains to his old home. "Ah, my good friend," I added, "how their hearts must rejoice to hear from you!" Then, after a short pause, I remarked, "What is the case against your prisoner? He, too, perhaps, may have a mother and sister in the East, thinking of him as your mother and sister do of you, and wondering when he will come back. For God's sake remember this!" The heart of the good man responded in a voice which, even to this day—now nearly thirty years past—sounds like a delicious melody in my ears: "I will do so!" Passing from him I went to the other jurors, and, finding they were about to go back to the trial, I exclaimed, "Don't be in a hurry, gentlemen; let us take another glass." They again acceded to my request, and, seeing that they were a little mellowed by their indulgence, I ventured to speak about the trial. I told them that the courts of the State were organized, and there was no necessity or justification now for lynch juries; that the prisoner appeared to be without friends, and I appealed to them, as men of large hearts, to think how they would feel if they were accused of crime where they had no counsel and no friends. "Better send him, gentlemen, to Marysville for trial, and keep your own hands free from stain." A pause ensued; their hearts were softened; and, fortunately, a man going to Marysville with a wagon, coming up at this moment, I prevailed upon them to put the prisoner in his charge to be taken there. The owner of the wagon consenting, they swore him to take the prisoner to that place and deliver him over to the sheriff, and to make sure that he would keep the oath, I handed him a "slug," a local coin of octagonal form, of the value of fifty dollars, issued at that time by assayers in San Francisco. We soon afterwards separated. As I moved away on my horse my head swam a little, but my heart was joyous. Of all things which I can recall of the past, this is one of the most pleasant. I believe I saved the prisoner's life, for in those days there was seldom any escape for a person tried by a lynch jury.

of gold. This was for the moment the great interest of the State, and the miners the most important class of the population. Here Mr. Field turned to account his recent experience. He had been among the miners. He had slept in their tents and their cabins, and sat by their campfires, listening to the tales of their adventures. He had learned something of the rules by which they were governed—rules by which he perceived that justice was practically administered. He saw that it would never do to undertake to override these regulations by a set of arbitrary laws, framed at a distance, by men ignorant of their peculiar conditions. The attempt to impose such an authority would be extremely impolitic; it would provoke resistance; a conflict would be inevitable; and what was far more important in his view, it would be cruelly unjust. The miners, who at great hardship and peril had sought out the places where gold was hidden in the beds of rivers and in the rocks of the mountains, had rights which could not be ignored. The wise course was to give the sanction of law to the rules which they had made for themselves. Then they could not complain of injustice when bound by the laws which they had framed for their own protection. Accordingly at an early stage of the session he introduced the following provision, which through his advocacy was adopted and incorporated into a general statute regulating proceedings in civil cases in the courts of the State:

"In actions respecting 'Mining Claims' proof shall be admitted of the customs, usages, or regulations established and in force at the bar, or diggings embracing such claims; and such customs, usages, or regulations, when not in conflict with the Constitution and laws of this State, shall govern the decision of the action."

These five lines contain, as the acorn contains the oak, the germinal principle of a whole code of wise and beneficent legislation. The great principles of law, being founded in natural justice, are always simple, and yet simple as this was, no one had had the sagacity to per-

ceive or the courage to propose it; but once proposed and adopted, it solved all difficulties, and smoothed the way to peace in all the borders of the Golden State. Its principle was afterwards adopted by other mining regions, and finally by the Congress of the United States. Its wisdom has been proved by thirty years of experience. For this single act, says a California writer, "the people of this State and of Nevada should ever hold the author in grateful remembrance. When they think of him only as a judge deciding upon the administration of laws framed by others, let them be reminded that in a single sentence he laid the foundation of our mining system so firmly that it has not been, and cannot be, disturbed." Years after, when Mr. Field became a Justice of the Supreme Court of the United States, he commented, in an opinion in an important case, upon the usages and regulations of miners, to which this legislation gave the force of law, and upon the vast benefits of that legislation. An extract from that opinion is given in a note below.*

* "The discovery of gold in California was followed, as is well known, by an immense immigration into the State, which increased its population within three or four years from a few thousand to several hundred thousand. The lands in which the precious metals were found belonged to the United States, and were unsurveyed, and not open, by law, to occupation and settlement. Little was known of them further than that they were situated in the Sierra Nevada Mountains. Into these mountains the immigrants in vast numbers penetrated, occupying the ravines, gulches, and cañons, and probing the earth in all directions for the precious metals. Wherever they went they carried with them that love of order and system and of fair dealing which are the prominent characteristics of our people. In every district which they occupied they framed certain rules for their government, by which the extent of ground they could severally hold for mining was designated, their possessory right to such ground secured and enforced, and contests between them either avoided or determined. These rules bore a marked similarity, varying in the several districts only according to the extent and character of the mines, distinct provisions being made for different kinds of mining, such as placer mining, quartz mining, and mining in drifts or tunnels. They all recognized discovery followed by appropriation as the foundation of the possessor's title, and development by working as the

Of the provision of law cited, Professor Pomeroy, in his sketch of the work of Judge Field, after speaking of its far-sighted sagacity, expediency, and wisdom, as established by the experience of thirty years throughout all the Pacific mining States and Territories, says: "I therefore venture the opinion, and think that its correctness cannot be questioned, that no single act of creative legislation, dealing with property rights and private interests, has exceeded this one in importance and in its effects in developing the industrial resources of the country. The

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condition of its retention. And they were so framed as to secure to all comers, within practicable limits, absolute equality of right and privilege in working the mines. Nothing but such equality would have been tolerated by the miners, who were emphatically the law-makers, as respects mining, upon the public lands in the State. The first appropriator was everywhere held to have, within certain well-defined limits, a better right than others to the claims taken up; and in all controversies, except as against the government, he was regarded as the original owner, from whom title was to be traced. But the mines could not be worked without water. Without water the gold would remain forever buried in the earth or rock. To carry water to mining localities, when they were not on the banks of a stream or lake, became, therefore, an important and necessary business in carrying on mining. Here, also, the first appropriator of water to be conveyed to such localities, for mining or other beneficial purposes, was recognized as having, to the extent of actual use, the better right. The doctrines of the common law respecting the rights of riparian owners were not considered as applicable, or only in a very limited degree, to the condition of miners in the mountains. The waters of rivers and lakes were consequently carried great distances in ditches and flumes, constructed with vast labor and enormous expenditures of money, along the sides of mountains and through cañons and ravines, to supply communities engaged in mining, as well as for agriculturists and ordinary consumption. Numerous regulations were adopted, or assumed to exist from their obvious justness, for the security of these ditches and flumes, and the protection of rights to water, not only between different appropriators, but between them and the holders of mining claims. These regulations and customs were appealed to in controversies in the State courts, and received their sanction; and properties to the value of many millions rested upon them. For eighteen years, from 1848 to 1866, the regulations and customs of miners, as enforced and moulded by the courts, and sanctioned by the legislation of the State, constituted the law governing property in mines and in water on the public mineral lands." (Jennison *v.* Kirk, 98 U. S. 457.)

causes which led to its enactment, its simple but efficient nature, and its beneficial consequences, cannot be better described than in the language of Judge Field himself, in an opinion," from which we have given an extract in a note. And he adds: "This enactment gave the force of law to an equitable system of mining and water regulations, and has been the direct means of promoting and protecting an industry which has secured and added an untold amount to the total wealth and resources of the country. I cannot leave this subject without a brief comment upon the social events themselves which I have been describing—events unexampled, I think, in the history of any other people. The whole conduct of the miners, their voluntary adoption, in the absence of all municipal law, of regulations so just, wise, and equitable that neither the State nor the national government has attempted to improve them, exhibits in the most striking manner those qualities which lie at the basis of the American character. So long as these qualities last, so long as American citizens, individually or collected into communities, possess and act upon these conservative tendencies, the liberties, safety, and perpetuity of the nation rest upon a certain and immovable foundation."

Next to the miners, and forming a large part of them, was another class requiring protection—that of poor debtors. Of the thousands who rushed to California in the early days, a large proportion were men who had met with reverses of fortune in the older States. Many were utterly broken down; and, sick at heart, and often sick in body, they had sought a new field in hope to begin life anew. It was all-important that they should not have their hands tied at the very beginning; that they should not find, on landing in their new home, that they were pursued by prosecutions, and their little means taken from them. In the older States there were laws exempting certain effects of a debtor. But these exemptions were very small. The workers who had come to build

up an empire on the Pacific Coast needed something more. Strong-limbed mechanics might as well be bound in hands and feet as deprived of tools to work with. The farmer needed his plow and his oxen, the surgeon his instruments, and the lawyer his library. To meet all these cases, Mr. Field drew a provision more comprehensive than had ever been framed before, exempting from forced sale under execution the following property of judgment debtors, except where the judgment was recovered for the purchase-money of the articles, viz:

"1. Chairs, tables, desks, and books, to the value of one hundred dollars.

"2. Necessary household, table, and kitchen furniture, including stove, stove-pipe, and stove furniture, wearing apparel, beds, bedding, and bedsteads, and provisions actually provided for individuals or family use sufficient for one month.

"3. Farming utensils, or implements of husbandry; also two oxen, or two horses, or two mules, and their harness, and one cart or wagon, and food for such oxen, horses, or mules for one month.

"4. The tools and implements of a mechanic necessary to carry on his trade, the instruments and chests of a surgeon, physician, surveyor, and dentist, necessary to the exercise of their professions, with their professional library, and the law libraries of an attorney or counsellor.

"5. The tent and furniture, including a table, camp-stools, bed and bedding, of a miner; also his rocker, shovels, wheelbarrow, spade, pumps, and other instruments used in mining, with provisions necessary for his support for one month.

"6. Two oxen, or two horses, or two mules, and their harness, furniture, and one cart or wagon, by the use of which a cartman, teamster, or other laborer habitually earns his living; and food for such oxen, horses, or mules for one month; and a horse, harness, and vehicle used by a physician or surgeon in making his professional visits.

"7. All arms and accoutrements required by law to be kept by any person."

This comprehensive provision spread a broad shield of protection over every honest man who was willing to work.

"The fundamental principle of the protection proposed by Mr. Field," says Professor Pomeroy, "was, that every person, in addition to those articles necessary for individual preservation, such as clothing, reasonable household furniture and effects, and the like, should be secured in the possession and use of those things by which, as necessary means and instruments, he pursues his profession, trade, business, or calling, whatever it may be, and acquires the ability of paying the demands of his creditors. This law, therefore, exempts, not only household furniture and the like, but the implements, wagons, and teams of a farmer, the tools of a mechanic, the instruments of a surveyor, surgeon, and dentist, the professional library of a lawyer and a physician, the articles used by the miner, the laborer, &c. In this connection it should also be stated that, though not its author, Mr. Field was a most strenuous supporter of the Homestead Bill, and was mainly instrumental in extending the exemptions originally proposed from three thousand to five thousand dollars. At that time there was no exemption whatever of personal property in California, and none equally extensive to be found in the previous legislation of any State of the Union. It is understood by those who are familiar with Judge Field that he looks back with greater satisfaction upon the exemption system which he thus created than upon any other of his legislative work."

Mr. Field was a member of the Judiciary Committee, and his work naturally related mainly to the administration of justice. "Among the most important of the measures drawn up by him," says Prof. Pomeroy,* "was a bill concerning the judiciary of the State. The act was general, dealing with the whole judicial system, and requiring great labor in its preparation. It completely

* John Norton Pomeroy, LL.D., Professor of Law in the University of California, wrote a somewhat elaborate review of the career of Judgo Field, as a Legislator, State Judge, and Justice of the Supreme Court of the United States, from which the above is taken.

reorganized the judiciary, and defined and allotted the jurisdiction, powers, and duties of all the grades of courts and judicial officers. An act passed in the subsequent session of 1853, revising and amending in its details the original statute of 1851, was also drawn up by him, although he was not then a member of the Legislature. The system then planned and established in 1851, and improved in 1853, and again in 1862, to conform to the constitutional amendments of the previous year, was substantially adopted in the codes of 1872, and continued in operation until it was displaced by the revolutionary changes made in the new constitution of 1879–'80. In connection with this legislation affecting the judiciary, he also drafted and procured the passage of an act concerning county sheriffs, defining all their official functions and duties; an act concerning county recorders, creating the entire system of registry which has since remained substantially unaltered; and an act concerning attorneys and counsellors at law, by which their duties were declared and their rights were protected against arbitrary proceedings by hostile judges. He also prepared and introduced two separate bills to regulate the civil and criminal practice. These acts were based upon the Code of Civil Procedure and the Code of Criminal Procedure proposed by the New York commissioners, but they contained a great number of changes and additions made necessary by the provisions of the California Constitution, and by the peculiar social condition and habits of the people. They were by no means bare copies taken from the New York codes, since Mr. Field altered and reconstructed more than three hundred sections, and added over one hundred new sections. The two measures were generally designated as the Civil and the Criminal Practice Acts. They were subsequently adopted by the other States and Territories west of the Rocky Mountains. They continued, with occasional amendments, in force in California until the present system of more elaborate

codes was substituted for them in 1872; and even this change was more in name than in substance, since all their provisions substantially reappear in some one of these codes."

In the Civil Practice Act he incorporated the provisions above mentioned respecting mining claims, and exempting certain articles of property of judgment debtors from forced sale under execution, both of which have become permanent features of the legislative policy of California.

But to enumerate all the acts framed by this indefatigable legislator would require us to write the history of the Legislature itself during that memorable session. Says one who was familiar with all the steps taken in that founding of a Commonwealth:

"The session of 1851 was the most important in the history of the State. It was the first one held after the admission of California into the Union, and some of the best timbers of the new governmental structure are the handiwork of Mr. Field. His labors exhibited great devotion to the public service, untiring industry, and a high sense of the responsibility of a public officer. Many bad bills were defeated through his influence and many defective ones amended by his suggestions. He was seldom absent from his seat; he carefully watched all measures; and there were few debates in which he did not participate. Such is the universal testimony of all the survivors of the legislative body of 1851, and its truth is established by the journal of the assembly and the papers of the time."

At the close of the Legislature, Mr. Field returned to Marysville. He had added to his reputation, but in other respects his fortunes were at a low ebb. His legal practice had been broken up by a ruffian on the bench, and he was as poor as when he landed in San Francico with but ten dollars in his pocket, and he had to ask credit for a week's board. But this judicial ruffian was now gone, and he had at last a clear field before him, and soon the same ability which he had shown in the Legislative Assembly gave him a conspicuous place at the bar. The next six years, which were devoted to his profession,

were years of success in every respect. His practice became very large. Indeed, one who watched his progress during those years said: "His practice was as extensive, and probably as remunerative, as that of any lawyer in the State." The same careful observer thus analyzed the secret of his success:

"He was distinguished at the bar for his fidelity to his clients, for untiring industry, great care, and accuracy in the preparation of his cases, uncommon legal acumen, and extraordinary solidity of judgment. As an adviser, no man had more the confidence of his clients; for he trusted nothing to chance or accident when certainty could be attained, and felt his way cautiously to his conclusions, which, once reached, rested upon sure foundations, and to which he clung with remarkable pertinacity. Judges soon learned to repose confidence in his opinions, and he always gave them the strongest proofs of the weight justly due to his conclusions."

Thus established in the high esteem of the profession and the public, he had an assured future before him. He was universally recognized as among the leaders of the bar. Had he chosen thus to continue at the bar, there seemed to be nothing of success or of fortune which was not within his reach. It was at this moment, when his prospects were at the brightest, that his professional career was interrupted by his elevation to the bench.

In 1857 he was elected Judge of the Supreme Court of the State for the term of six years, commencing January 1, 1858. There were two candidates besides himself before the people, and 93,000 votes were polled. He received a majority of 36,000 over each of his opponents, and 17,000 over them both together. His duties began even before his regular term of office. In September of that year the Chief Justice of the court, Hugh L. Murray, died, and one of the Associate Judges was appointed to fill the vacancy created in the court, though Mr. Terry, being the senior associate, succeeded to the Chief Justiceship. This appointment left the remainder of the Asso-

ciate Judge's term of service, which extended to the following January, unoccupied, and Mr. Field was appointed by the Governor of the State—a political opponent—to fill it. He accepted the appointment, and took his seat on the bench October 13, 1857. He held the office of Associate Judge until the resignation of Chief Justice Terry in September, 1859, when he became Chief Justice, and so continued as long as he remained on the bench of California.

The appointment of Judge Field to the bench necessitated his change of residence from Marysville to Sacramento. The latter city was the capital of the State. The sessions of the Supreme Court were held there, and there chambers for the judges were provided. As soon, therefore, as he could arrange his private business at Marysville he removed to Sacramento, but he left Marysville with much regret.* He had passed many years there happily and had made many warm friends, for whom he always retained pleasant recollections and great regard. While the people there were, as a general rule, peaceful in their conduct and constituted a prosperous and moral community, there were some of a different temperament and disposition. Difficulties not uncommon in new settlements sometimes arose, leading to unpleasant and danger-

*The Judge in his "Reminiscences" thus speaks of Marysville: "I had seen it [Marysville] grow from a collection of tents with a few hundred occupants to a town of substantial buildings, with a population of from eight to ten thousand inhabitants. From a mere landing for steamers it had become one of the most important places for business in the interior of the State. When I left it was the depot of merchandise for the country lying north and east of it; and its streets presented a scene of bustle and activity. Trains of wagons and animals were constantly leaving it with goods for the mines. Its merchants were generally prosperous; some of them were wealthy. Its bankers were men of credit throughout the State. Steamers plied daily between it and Sacramento, and stages ran to all parts of the country, and arrived every hour. Two daily newspapers were published in it. Schools were opened and fully attended. Churches of different denominations were erected and filled with worshippers. Institutions of benevolence were founded

ous collisions. The Judge avoided all such collisions as much as possible, consistently with proper respect for himself. In his contest with the ruffian judge, Turner, referred to above, he had laid down a line of conduct to pursue towards all persons with whom he should come in contact, that is, to treat them courteously, so far as such treatment was possible with the maintainance of his own just rights and a proper self-respect; but not to cross the streets or turn a corner to get out of the way of any one because of his threats of violence or disposition to quarrel—to excuse always an unintentional injury, but not to permit one to step on his toes by accident more than twice in immediate succession. Seeking to avoid, but never shrinking from a collision when forced on him, he passed the seven years of his life in Marysville with but few personal difficulties, and they ended in such a way that their renewal was not earnestly sought by the assailants.

He was received in Sacramento by its citizens with consideration and courtesy, and resided there during the whole period he held his position on the State bench, which was over five years and a half, and during that period received the same consideration and courtesy. Whilst residing there he became acquainted with Miss

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and supported. A provident city government and a vigorous police preserved order and peace. Gambling was surpressed, or carried on only in secret. A theatre was built and sustained. A lecture-room was opened and was always crowded when the topics presented were of public interest. Substantial stores of brick were put up in the business part of the city, and convenient frame dwellings were constructed for residences in the outskirts, surrounded with plats filled with trees and flowers. On all sides were seen evidences of an industrious, prosperous, moral, and happy people, possessing and enjoying the comforts, pleasures, and luxuries of life. And they were as generous as they were prosperous. Their hearts and their purses were open to all calls of charity. No one suffering appealed to them in vain. No one in need was turned away from their doors without having his necessities relieved. It is many years since I was there, but I have never forgotten, and I shall never forget, the noble and generous people that I found there in all the walks of life."

Sue Virginia Swearingen, a resident of San Francisco, and they were married on the 2d of June, 1859, an union which has been to him a constant source of happiness.

In the exchange of positions from the bar to the bench Mr. Field left the sphere in which he was at home, and which might have seemed most attractive to his ambition. To an aspiring lawyer there is no fame so dear as that of a great advocate. One who has always gained success in this arena, who has proved his power over courts and juries, is very reluctant to turn aside from this brilliant career. He felt a natural regret that he could no more take part in these exciting contests, even though it were to exchange his place for the more calm and dignified position of a judge. But in the condition of California at that time there was perhaps no officer of the State so much needed to strengthen law and order—the foundations of the Commonwealth—as an upright, able, and courageous judge. The bar of California contained a number of men of eloquence and ability, fluent speakers and debaters, ready in wit as in argument, who would run over a weak judge or a timid one. They now found in the seat of authority one whose clearness of mind and understanding of the great principles of law could not be confused or deceived, and who, with the utmost courtesy of manner, united a firmness and courage nowhere more needed than on the bench. This combination of qualities inspired respect for the judicial office and for the law which it represented. Besides this, in California the laws themselves were unsettled. Successive Legislatures had, indeed, passed volumes of enactments, but the force of these could only be determined by actual decisions in the courts. It is well understood in law that the work of the legislator is incomplete until the judge comes to apply the acts which have been passed, and, in Scripture phrase, "to give the meaning and the interpretation thereof." The novelty of some of the cases presented for decision, and their extreme difficulty, are such as only a lawyer can

understand. I do not feel competent to give an opinion on the numerous complexities which he was to disentangle, but will quote what was written of him afterwards, when he was about to retire from that court, by one who was for three years his associate in this work—Judge Joseph G. Baldwin:

"When he came to the bench the calendar was crowded with cases involving immense interests, the most important questions, and various and peculiar litigation. California was then, as now, in the development of her multiform material resources. The judges were as much pioneers of law as the people of settlement. To be sure, something had been done, but much had yet to be accomplished; and something, too, had to be undone of that which had been done in the feverish and anomalous period that had preceded. It is safe to say that, even in the experience of new countries, hastily settled by heterogeneous crowds of strangers from all countries, no such example of legal or judicial difficulties was ever before presented as has been illustrated in the history of California. There was no general or common source of jurisprudence. Law was to be administered almost without a standard. There was the civil law, as adulterated or modified by Mexican provincialisms, usages, and habitudes, for a great part of the litigation; and there was the common law for another part, but *what that was* was to be decided from the conflicting decisions of any number of courts in America and England, and the various and diverse considerations of policy arising from local and other facts. And then, contracts made elsewhere, and some of them in semi-civilized countries, had to be interpreted here. Besides all of which may be added that large and important interests peculiar to this State existed—mines, ditches, &c.—for which the courts were compelled to frame the law, and make a system out of what was little better than chaos.

"When, in addition, it is considered that an unprecedented number of contracts, and an amount of business without parallel, had been made and done in hot haste, with the utmost carelessness; that legislation was accomplished in the same way, and presented the crudest and most incongruous materials for construction; that the whole scheme and organization of the government, and the relation of the departments to each other, had to be ad-

justed by judicial construction—it may well be conceived what task even the ablest jurist would take upon himself when he assumed this office. It is no small compliment to say that Judge Field entered upon the duties of this great trust with his usual zeal and energy, and that he leaves the office not only with greatly increased reputation, but that he has raised the character of the jurisprudence of the State. He has, more than any other man, given tone, consistency, and system to our judicature, and laid broad and deep the foundation of our civil and criminal law. The land titles of the State—the most important and permanent of the interests of a great Commonwealth—have received from his hand their permanent protection, and this alone should entitle him to the lasting gratitude of the bar and the people."

The most important land cases in which he delivered the opinion of the court while on the State bench are mentioned in a note below.* A more particular notice may be taken of one or two of them from the peculiarity of the questions presented, such as the alleged ownership by the State of the gold and silver in the lands of private individuals, and the right of maintaining a possessory action for lands, the ownership of which was in the United States or in the State.

In 1853, in Hicks *v.* Bell (3 Cal. 220), the Supreme Court had decided that the State, by virtue of her sovereignty, owned the mines of gold and silver within her limits, wherever found, even in the lands of private individuals. This decision was founded upon the case of the Queen *v.* Earl of Northumberland, reported in Plowden, where it was held that the King owned the mines and ores of gold and silver found within the realm, in whatsoever land they existed. The Supreme Court of California, without considering the reasons assigned in the

* Ferris *v.* Coover, (10 Cal. 589;) Waterman *v.* Smith, (13 Cal. 373;) Moore *v.* Wilkinson, (13 Id. 478;) Biddle-Boggs *v.* Merced Mining Co., (14 Cal. 361–366;) Stark *v.* Barrett, (15 Cal. 362;) Mott *v.* Smith, (16 Cal. 534;) Coryell *v.* Cain, (16 Id. 567;) Teschemacher *v.* Thompson, (18 Cal. 20;) Leese *v.* Clark, (18 Cal. 565; 20 Cal. 411;) Estrada *v.* Murphy, (18 Cal. 268;) Moore *v.* Smaw, and Fremont *v.* Fowler, (17 Cal. 200.)

case in Plowden, adopted its conclusion, and, as the gold and silver in the British realm were held to belong to the Crown, it was concluded that such metals within the limits of a State must belong, in this country, to the State. "The State, therefore," said the court, "has solely the right to authorize them—the mines of gold and silver—to be worked, to pass laws for their regulation, to license miners, and to fix such terms and conditions as she may deem proper, to the freedom of their use. In the legislation upon this subject she has established the policy of permitting all who desire it to work the mines of gold and silver, with or without conditions, and she has wisely provided that their conflicting claims shall be adjudicated by the rules and customs which may be established by bodies of them working in the same vicinity." The miners, under this decision, assumed in many instances the right to invade the lands of private proprietors for the purpose of mining, as freely as they entered upon the public lands. It was a part of the policy of the State to encourage a development of the mines, and they claimed the right to assist in that way in such development under the sanction of that decision. The trouble and vexation and spoliation arising from such invasion led the court, in the subsequent case of Stoakes *v.* Barrett (5 Cal. 37), to modify this ruling, and to hold that, though the State was the owner of the gold and silver found in the land of private individuals as well as in public lands, yet to authorize an invasion of private property in order to enjoy a public franchise would require more specific legislation than any resorted to. In the case of Biddle-Boggs *v.* Merced Mining Company (14 Cal. 279, 379), which came before the court in 1859, the plaintiff brought an action for the recovery of land covered by a patent of the United States, issued upon the confirmation of a Mexican grant. The defendant claimed the existence of a license to extract the gold and silver found in the land notwithstanding the patent,

under the decision of the State. The existence of this license was repudiated by the court, and, in speaking of it, Judge Field said: "There is gold in limited quantities scattered through large and valuable districts, where the land is held in private proprietorship, and, under this pretended license, the whole might be invaded, and for all useful purposes destroyed, no matter how little remunerative the product of the mining. The entry might be made at all seasons, whether the land was under cultivation or not, and without reference to its condition, whether covered with orchards, vineyards, gardens, or otherwise. Under such a state of things the proprietor would never be secure in his possession, and without security there would be little development, for the incentive to improvement would be wanting. What value would there be to a title in one man with the right of invasion in the whole world? And what property would an owner possess in mineral land, the same being in effect to him poor and valueless just in proportion to the actual richness and abundance of its products? There is something shocking to all our ideas of the right of property in the proposition that one man may invade the possessions of another and dig up his fields and gardens, cut down his timber, and occupy his land under the pretense that he has reason to believe there is gold under the surface, or, if existing, that he wishes to extract and remove it."

In Moore *v.* Smaw and Fremont *v.* Fowler (17 Cal. 199) the doctrine that the precious metals belonged to the State by virtue of her sovereignty was fully exploded. In that case Judge Field thus defined what was meant by the sovereignty of a State: "Sovereignty," he said, "is a term used to express the supreme political authority of an independent State or nation. Whatever rights are essential to the existence of this authority are rights of sovereignty. Thus the right to declare war, to make treaties of peace, to levy taxes, to take private prop-

erty for public uses—termed the right of eminent domain—are all rights of sovereignty, for they are rights essential to the existence of supreme political authority. In this country, *this authority is vested in the people*, and is exercised through the joint action of their Federal and State governments. To the Federal government is delegated the exercise of certain rights and powers of sovereignty, and, with respect to sovereignty, rights and powers are synonymous terms; and the exercise of all other rights of sovereignty, except as expressly prohibited, is reserved to the people of the respective States, or vested by them in their local governments. When we say, therefore, that a State of the Union is sovereign, we only mean that she possesses supreme political authority, except as to those matters over which such authority is delegated to the Federal government or prohibited to the States; in other words, that she possesses all the rights and powers essential to the existence of an independent political organization, except as they are withdrawn by the provisions of the Constitution of the United States. To the existence of this political authority of the State—*this qualified sovereignty* or any part of it—the ownership of the minerals of gold and silver found within her limits is no way essential."

In Coryell *v.* Cain (16 Cal. 572), the principle that had been adopted in suits for mining claims, ascribing to the first appropriator of mines, who followed up his discovery by actual development of the mine, the better right to the same, was held to apply to actions for the possession of lands, the title of which was in the United States or in the State, in advance of any legislation for its use or sale. Thus, in this case, which was for the possession of land the title of which was assumed to be in this condition, Judge Field said: "It is undoubtedly true, as a general rule, that the claimant in ejectment must recover upon the strength of his own title, and not upon the weakness of his adversary's, and that it is a sufficient

answer to his action to show title out of him and in a third party. But this general rule has, in this State, from the anomalous condition of things arising from the peculiar character of the mining and landed interests of the country, been to a certain extent qualified and limited. The larger portion of the mining lands within the State belong to the United States, and yet that fact has never been considered as a sufficient answer to the prosecution of actions for the recovery of portions of such lands. Actions for the possession of mining claims, water privileges, and the like, situated upon the public lands, are matters of daily occurrence, and if the proof of the paramount title of the government would operate to defeat them, confusion and ruin would be the result. In determining controversies between parties thus situated, this court proceeds upon the presumption of a grant from the government to the first appropriator of mines, water privileges, and the like. This presumption, which would have no place for consideration as against the assertion of the rights of the superior proprietor, is held absolute in all those controversies. And with the public lands which are not mineral lands, the title as between citizens of the State, where neither connects himself with the government, is considered as vested in the first possessor, and to proceed from him."

The doctrine of this decision was of great benefit to the occupants of the public lands in advance of measures by the government for their sale. It preserved peace among them and gave them protection until the government should come forward and assert its superior title.

Numerous cases, besides those to which reference is had, might be cited, not only concerning lands, but mortgages, the powers and liabilities of municipal corporations, and many other subjects.* As stated in the work to which

* Butte Canal and Ditch Co. *v.* Vaughan, (11 Cal. 153;) Baker *v.* Baker, (13 Id. 87;) Pierce *v.* Robinson, (13 Id. 116;) Blanding *v.* Burr, (13 Id. 343;) Koch *v.* Briggs, (14 Id. 256;) Noe *v.* Card, (14 Id. 577;) Norris *v.*

Professor Pomeroy's sketch is prefixed, they related to the claim of the State to five hundred thousand acres of land donated by the act of Congress of September 4, 1841, for purposes of internal improvement, and to its right to dispose of the lands in advance of the public surveys;—to contracts of the State for the support and labor of its convicts;—to the power of the courts to compel by mandamus officers of the State to do their duty;—to the conflicting rights of miners to the use of the water of streams in the mountains for the purpose of mining;—to the right of the wife to a share of the community property under the law of Mexico and the law of California;—to the title of the city of San Francisco to lands within her limits as successor of a former Mexican pueblo and under the grant of beach and water lots by the State in 1851;—to the construction of wills;—to the distinction between mortgages and deeds of trust; and to a great number of other subjects. A citation is given in the note of several of these cases.

As might be supposed, the fame of such judicial decisions could not be hid in a corner. They attracted marked attention in the Pacific States, where many similar cases were likely to arise for decision, and he was soon recognized as the first judicial authority on that coast. So universally was this conceded that when, in 1863, the increasing importance of those States led Congress to pass a law creating a new circuit on that coast, and a tenth Justice on the Supreme Bench of the United States, the whole

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Harris, (15 Id. 226;) State of California *v.* McCauley, (15 Id. 429;) Holliday *v.* Frisbie, (15 Id. 630;) McCauley *v.* Brooks, (16 Id. 12;) Koppikus *v.* State Capital Commissioners, (16 Id. 249;) Brumagim *v.* Tillinghast, (18 Id. 266;) Doll *v.* Meador, (16 Id. 295;) Halleck *v.* Mixer, (16 Id. 575.) McCraken *v.* San Francisco, (16 Cal. 591;) Grogan *v.* The Same, (18 Cal. 608;) Pimental *v.* The Same, (21 Cal. 359;) Argenti *v.* The Same, (16 Cal. 282;) Zottman *v.* The Same, (20 Cal. 96;) McMillan *v.* Richards, (9 Cal. 365;) Nagle *v.* Macy, (9 Cal. 426;) Johnson *v.* Sherman, (15 Cal. 287;) Goodenow *v.* Ewer, (16 Cal. 461;) Perry *v.* Washburn, (20 Cal. 318.)

delegation from the Pacific—Senators and Representatives, Democrats and Republicans—went in a body to President Lincoln and urged the appointment of Judge Field. Others were mentioned, but no other name was pressed by the bar of California for the position, for no other man was thought so eminently fitted for it. He was acordingly nominated by the President, and confirmed unanimously by the Senate. His removal was a great loss to the bench of California. "By this event," said Judge Baldwin, "the State has been deprived of the ablest jurist who ever presided over her courts."

At the time of his nomination for a Justice of the Supreme Court of the United States his name was pending before the Senate upon a nomination for Circuit Judge of the local circuit, on the coast, consisting only of the State of California, and of which Hall McAllister had been the judge, he having resigned. The creation of the new circuit on the coast did away with the existence of the local circuit.

Judge Field's commission as a Justice of the Supreme Court was dated on the 10th of March, 1863, but he did not take the oath of office till the 20th of May. For this there was a reason of convenience and a reason of sentiment. A great number of cases were pending in the Supreme Court of California, in which he had heard the arguments, and he desired to have them decided before he left the bench. But there was also another reason. The 20th of May was his father's birthday, and he thought that the dear old patriarch, then living in New England, who on that day would complete his eight-second year, would be gratified to learn that on the same day his son had become a Justice of the Supreme Court of the United States.

As the court was not in session at the time he took the oath of office, he was assigned to the Tenth Circuit by a special designation of the President, made on the 22d of June, 1863. A copy of that order is found in the 2d of

Black's Reports at page 7. The circuit at that time consisted of the States of California and Oregon. When Nevada become a State it was added to the circuit. When the act creating independent Circuit Judges was passed, in 1869, each of the Justices was required to attend a term in each district of his circuit once in every two years. Up to the time of the creation of the Circuit Court of Appeals, in 1891, Mr. Field attended, each year, a term of every District Court in his circuit, when there was any business requiring his consideration, after his appointment, with the exception of three summers, during two of which he was absent in Europe, and during one he was not in good health. Since the creation of the Circuit Court of Appeals he has not been required, as he construes the law, to attend at a Circuit Court in each district.

Immediately after receiving his assignment he entered upon the discharge of his duties, and, in October following, he presided at a term of the Circuit Court of the United States held at San Francisco, at which certain parties—Greathouse, Harpending, Rubery, and others—were brought to trial for treason against the United States. It appeared that Harpending, a native of Kentucky, and Rubery, a native of England, had contemplated fitting out a privateer, at the city of San Francisco, for the purpose of taking several of the mail steamships plying between that port and Panama, and other vessels. With this object in view, Harpending had gone across the country to Richmond, Virginia, and procured from Jefferson Davis, the President of the Confederate States, a letter of marque, authorizing him to prey upon the commerce of the United States, and to burn, bond, or take any vessel of their citizens. He also received a letter of instructions directing him how to act, and containing a form of bond in case any prizes taken should be bonded. Upon his return to San Francisco he and Rubery made arrangements for the purchase of such

a vessel as would suit their purpose, but these arrangements failed on account of the dishonor of the drafts drawn for the purchase money by Rubery, and the consequent want of funds. They also made a voyage to Cerros Island for the purpose of examining into its fitness as a depot and the rendezvous where to take the Panama steamers. In January or February of 1863, they made the acquaintance of parties in San Francisco who furnished the money and fitted out a vessel by the name of J. M. Chapman, to cruise against the vessels and commerce of the United States, and carry out their scheme of privateering, and furnished it with arms and ammunition for that purpose and obtained a suitable number of men for a crew, the arms and ammunition being packed in cases marked "oil mills and machinery," Greathouse, one of the conspirators, giving out that he was acting in the interest of the Liberal party of Mexico. The plan of the cruise was to sail from San Francisco on Sunday, March 15, 1863, to the Island of Guadalupe, which lies some three hundred miles off the coast of California, there land Harpending and the fighting men, who were to be shipped on the night of Saturday, March 14, thence to proceed to Manzanillo, there to discharge such freight as might be taken, then return to Guadalupe and fit the schooner for privateering purposes; then to proceed again to Manzanillo, where the men were to be enrolled and their names inserted in the letter of marque, a copy of which was then to be forwarded to the government of the Confederate States. Their plan was first to capture a steamer, bound from San Francisco to Panama, on its arrival at Manzanillo; land its passengers on the coast of Mexico, and with the steamer thus taken capture a second steamer. Next, to seize a vessel from San Francisco, then engaged in recovering treasure from the wreck of the steamer Golden Gate; then to go to the Chincha Islands and burn United States vessels there, and thence to the

China Sea, and finally to the Indian Ocean and join Admiral Semmes of the Confederate Navy. In pursuance of this plan, and to prevent suspicion, the schooner was put up for Manzanillo. A partial cargo was shipped on board, and Law, one of the conspirators, cleared the vessel at the custom-house for that port, signing and swearing to a false manifest. On the night of March 14, in accordance with the plan arranged, all but one of the parties went on board; fifteen persons, who had been employed by Harpending as privateersmen, were placed in the hold in an open space left for them in stowing the cargo, directly under the main hatch. The only person absent was Law, who remained on shore, with the understanding that he should be on hand before morning. It afterward appeared that he had become intoxicated and did not get down to keep his engagement until after the schooner had been seized. During the evening Rubery had heard rumors that the vessel was to be overhauled, and as the morning approached and Law did not appear, he proposed sailing without him. At daylight, Law being still absent, Libby, another of the conspirators and acting captain, cast off the lines and began working the schooner out from the wharf into the stream. After the vessel had thus started she was seized by an officer of the United States, and the parties were taken to Alcatraz and confined. They were indicted by the grand jury of the United States Circuit Court for treason, under the act of Congress of July 17, 1862, for engaging in and giving aid and comfort to the then existing rebellion against the government of the United States. The trial lasted several days and excited a great deal of interest, being the first practical attempt to give assistance to the rebellion by an armed expedition fitted out in one of the ports of the United States. It gave the court an opportunity of defining what constituted treason and giving aid and comfort to the enemy, and in what respect parties leagued in with the Confederates brought themselves

within the law. The parties claimed protection under the letter of marque which they had obtained, but the court instructed the jury that, if the parties indicted had obtained a letter of marque from the President of the so-called Confederate States, that fact did not exempt them from prosecution in the tribunals of the country for the acts charged in the indictment; that, if belligerent rights had been conceded to the Confederate States and to their citizens in arms as was claimed, such rights could not be invoked by persons entering into States which had never seceded, and secretly getting up hostile expeditions against our government and its authority and laws; that the local and temporary allegiance which every one, citizen or alien, owes to the government under which he, at the time, lives is sufficient in such case to subject him to the penalties of treason. The jury found the defendants guilty, and they were sentenced to both fine and imprisonment. One of the defendants—Rubery—was subsequently pardoned by President Lincoln at the request of "John Bright of England." The circumstances of the pardon were peculiar. The conspiracy to seize the steamers that plied between San Francisco and Panama, and land the passengers on the coast of Mexico, greatly incensed the people of San Francisco, for, in addition to the loss of the large amount of treasure which each steamer carried, the landing of passengers in that region would have been the cause of the death of many of them. The usual number of passengers in a steamer between San Francisco and Panama, at that time, exceeded a thousand. Some months after the conviction of the prisoners, Mr. Sumner, Senator from Massachusetts, received a letter from Mr. Bright, asking for the pardon of Rubery, whose family relatives resided in Birmingham, which he represented in Parliament; and the Senator called upon Judge Field, who had then removed to Washington and taken his seat on the bench of the Supreme Court, to learn how such a pardon

would be received in San Francisco. The Judge replied that he thought it would produce much irritation and angry feeling. Mr. Sumner then stated that, as it was the request of Mr. Bright, who had always been the firm friend of America in the war then existing, and given his great influence to the support of our government, he would be glad to secure the pardon desired. The Judge then stated to Mr. Sumner that, if President Lincoln would put in his pardon that it was granted at the request of "our good friend, John Bright, of England," there would be little complaint made in San Francisco at the act of clemency. Mr. Sumner so reported to Mr. Lincoln, and the pardon was granted, with that language inserted.

The new appointment obliged the removal of Judge Field from San Francisco to Washington, which now became his residence for the greater part of the year; but as he was assigned to the new circuit, consisting of the Pacific States, it was a part of his duty to return each summer to hold a term of the Circuit Court in California, Nevada, or Oregon, and sometimes in all of them.

When he ascended the bench of the Supreme Court of the United States he took his seat in a company of illustrious men. Taney was then Chief Justice, and though he had long passed his fourscore years, his mind did not fail with age, and he still continued to preside with the serenity of wisdom. He died the following year, and was succeeded by Chief Justice Chase. There sat, as Associate Justices, Wayne, Catron, Nelson, Grier, Clifford, Swayne, Miller, and Davis. The questions which came before this court were worthy of the dignity of such a tribunal. As observed by a legal writer:

"Legal questions of a countless number and variety, affecting private rights, and involving every department of jurisprudence—common law and equity, admiralty, maritime and prize law, patent law and copyright, the civil law as embodied in Louisiana and Mexican codes, statutes of Congress and of State Legislatures,

everything except pure matters of probate—may come before that court for adjudication. Probably no other single tribunal in the world is called upon to exercise a jurisdiction extending over so many different subjects, and demanding from its judges such a variety of legal knowledge. But the highest power of the court, that incident of transcendent importance which elevates it far above any other judicial tribunal, is its authority as a final arbiter in all controversies depending upon a construction of the United States Constitution, in the exercise of which exalted functions, as the final interpreter of the organic law, it determines the bounds beyond which neither the national nor the State governments may rightfully pass. It is the unique feature of our civil polity, the element which distinguishes our political institutions from all others, the crowning conception of our system, the very keystone of the vast arch, upon which depend the safety and permanence of the whole fabric, that the extent and limits of the legislative and executive powers, under the Constitution, both of the nation and of the individual States, are judicially determined by a body completely independent of all other departments, conservative in its essential nature and tendencies, and inferior to no authority except the deliberate organic will of the people expressed through the elective franchise."

The vast conservative power of this department of our Government, as well as the magnitude of the questions submitted to its decision, was never more fully illustrated than in the cases which grew out of the Civil War and the legislation to which it gave rise. One or two examples will illustrate the nature of these cases and of the questions involved. One of the first of these was the famous *Milligan Case.* In October, 1864—six months before the close of the war—a man by the name of Milligan, a resident of Indiana, was arrested by order of the military commander of the district and thrown into prison. In the excitement of war the authorities were disposed to make quick work of treason, proved or suspected. He was almost immediately brought before a military commission charged with conspiracy against the Government, affording aid and comfort to rebels, inciting to insurrec-

tion, disloyal practices, and violation of the laws of war, and was found guilty and sentenced to death by hanging. The proof may have been ample. No doubt he was a "rebel sympathizer," and may have been very open and bold in expressing his sympathy. But he was not a resident of a State in rebellion, nor was he in the military or naval service or under military authority. There was no rebellion in Indiana, or state of siege, and there was no excuse for martial law. The courts were open, and of whatever offence he had been guilty he could be tried and punished according to law. But this did not satisfy the eager spirit of many loyal men who would trample down all opposition to the government of the Union as they would trample down an army in the field. Even the good President Lincoln was so far governed by these considerations, that he approved the sentence and ordered it to be carried into execution, and the man would have been hung had not the Supreme Court stretched forth its powerful hand to save him from the scaffold. When the question was brought before that tribunal, the Justices were unanimous in decreeing that the man who had been so accused and condemned should be set at liberty. But five of the nine Justices (of whom Judge Field was one) went still farther, and in rendering their decision entered a solemn declaration in support of civil authority as against military tribunals, which is one of the most memorable decisions in the annals of the country. Referring to this decision, in which he took part, Judge Field pays a high tribute to one of his associates:

"The opinion was written by Mr. Justice Davis, and it will be a perpetual monument to his honor. It laid down in clear and unmistakable terms the doctrine that military commissions organized during the war, in a State not invaded nor engaged in rebellion, in which the Federal courts were open and in the undisturbed exercise of their judicial functions, had no jurisdiction to try a citizen who was not a resident of a State in rebellion, nor a prisoner of war, nor a person in the military or naval service;

and that Congress could not invest them with any such power; and that, in States where the courts were thus open and undisturbed, the guaranty of trial by jury contained in the Constitution was intended for a state of war as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances."

Hardly had the excitement of this case subsided when the court was called upon to consider the famous *Test Oath Case.* In the Constitution of Missouri just adopted had been inserted a provision requiring, as a condition of holding any office of honor, trust, or profit under the State, or of filling any one of numerous positions previously open to all, that the party should take what was called the Ironclad Oath—that is, swear that he had never had any thing to do with the rebellion, and had never favored it openly or secretly. Not only did the oath extend to his acts, but to his secret motives and feelings. It contained more than thirty distinct affirmations, and seemed like a series of tests framed by the Inquisition to search out a man's very soul, and to convict him in spite of himself. If a man could not swear to each of these, the constitution did not permit him to hold any of the offices, trusts, or positions mentioned. He could not teach school; he could not practice law; he could not be a trustee of a church or an officer of a corporation; he could not preach the Gospel; he could not administer the sacraments. It is hard to believe, in this time of the world, that such provisions could be found in the Constitution or laws of any civilized country. They belong to the Dark Ages rather than to the nineteenth century—to Spain and Russia rather than to free America. Yet there they were, in the Constitution of Missouri. The only apology for such provisions is that the Constitution was framed under the angry excitement caused by the Civil War. Their rigid enforcement was nevertheless attempted.

A priest of the Roman Catholic church in that State, Father Cummings, was indicted for the crime of teaching

and preaching, as a priest and minister of that religious denomination, without taking this oath, and convicted, and sentenced to pay a fine of five hundred dollars, and to be committed to jail until it was paid. The case was appealed to the Supreme Court of Missouri, which affirmed the judgment, and then, as the last resort, it was carried to the Supreme Court of the United States. Of the nine judges sitting on that tribunal, in that sanctuary of justice, four voted to sustain that legislation. Judge Field gave the casting vote against it, and wrote the opinion in burning words, by which those proscriptive provisions were annulled, and declared to be beyond the power of a State of the American Union to enact.*

*In his opinion the Judge said: "The oath thus required is, for its severity, without any precedent that we can discover. In the first place, it is retrospective; it embraces all the past from this day; and, if taken years hence, it will also cover all the intervening period. In its retrospective feature we believe it is peculiar to this country. In England and France there have been test oaths, but they were always limited to an affirmation of present belief, or present disposition towards the government, and were never exacted with reference to particular instances of past misconduct. In the second place, the oath is directed not merely against overt and visible acts of hostility to the government, but is intended to reach words, desires, and sympathies, also. And, in the third place, it allows no distinction between acts springing from malignant enmity and acts which may have been prompted by charity or affection or relationship. If one has ever expressed sympathy with any who were drawn into the rebellion, even if the recipients of that sympathy were connected by the closest ties of blood, he is as unable to subscribe to the oath as the most active and the most cruel of the rebels, and is equally debarred from the offices of honor or trust, and the positions and employments specified." . . . . .

And again: "The provision of the Federal Constitution [against the passage of an *ex post facto* law] intended to secure the liberty of the citizen, cannot be evaded by the form in which the power of the State is exerted. If this were not so, if that which cannot be accomplished by means looking directly to the end, can be accomplished by indirect means, the inhibition may be evaded at pleasure. No kind of oppression can be named, against which the framers of the Constitution intended to guard, which may not be effected. Take the case supposed by counsel, that of a man tried for treason and acquitted, or if convicted, pardoned; the legislature may nevertheless enact that, if the person thus acquitted

But we have no space to follow the cases growing out of the war which sprung up in great number and variety: such as cases of pardon and amnesty; cases of confiscation of property; cases involving the question of the legislative power of the insurgent States during the war, and the extent to which the Confederate government should be regarded as a *de facto* government. The policy of the Reconstruction Acts of Congress, by which the South was divided into military districts, and placed under the government of military officers, was odious in the extreme to the Judge. He thought it served only to prolong the irritations of the war, and to give up a whole section of the country, which had already been swept with destruction, to the anarchy of misrule. His controlling desire was to have the government brought back to the rules and methods of peace. In his view it was time that the reign of arms should cease, and the reign of law and order begin.

But the Reconstruction Acts were never brought to the test of judicial decision, and from their nature could not be. An attempt was made to obtain a decision

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or pardoned does not take an oath that he never has committed the acts charged against him, he shall not be permitted to hold any office of honor or trust or profit, or pursue any avocation in the State. Take the case before us; the Constitution of Missouri, as we have seen, excludes, on failure to take the oath prescribed by it, a large class of persons within her borders from numerous positions and pursuits; it would have been equally within the power of the State to have extended the exclusion so as to deprive the parties who are unable to take the oath, from any avocation whatever in the State. Take still another case: suppose that, in the progress of events, persons now in the minority in the State should obtain the ascendency. and secure the control of the government, nothing could prevent, if the constitutional prohibition could be evaded, the enactment of a provision requiring every person, as a condition of holding any position of honor or trust, or of pursuing any avocation in the State, to take an oath that he had never advocated or advised or supported the imposition of the present expurgatory oath. Under this form of legislation the most flagrant invasion of private rights, in periods of excitement, may be enacted, and individuals, and even whole classes, may be deprived of political and civil rights."

of the court on them in the case of the State of Mississippi *v.* President Johnson (4 Wall. 475). A motion was made on behalf of the State of Mississippi for leave to file a bill in its name praying the court perpetually to enjoin and restrain Andrew Johnson, President of the United States, and E. O. C. Ord, general commanding in the district of Mississippi and Arkansas, from executing or in any manner carrying out the Reconstruction Acts.

The Attorney-General objected to the leave asked for upon the ground that no bill which makes the President a defendant and seeks an injunction against him to restrain the performance of his duties should be allowed to be filed in the court, and this point was fully argued. It was assumed by the counsel for the State that the President in the execution of the Reconstruction Acts was required to perform a mere ministerial duty, but the court said that in this assumption there was a confounding of the terms ministerial and executive; that the duty imposed on the President was in no just sense ministerial, but was purely executive and political. "An attempt," said the court, "on the part of the judical department of the government to enforce the performance of such duties by the President might be justly characterized in the language of Chief Justice Marshall as 'an absurd and excessive extravagance.'" It was true that in the case before the court its interposition was not sought to enforce action by the executive under constitutional legislation, but to restrain such action under legislation alleged to be unconstitutional. But the court said it was unable to perceive that this circumstance took the case out of the general principles which forbid judicial interference with the exercise of executive discretion. The motion for leave to file a bill was, therefore, denied.

In the subsequent case of The State of Georgia *v.* Stanton (6 Wall. 50), a bill in equity—filed by the State to enjoin the Secretary of War and other officers, who represented the executive authority of the United States, from carry-

ing into execution the Reconstruction Acts of Congress, on the ground that such an execution would annul and totally abolish the existing State government of the State, and establish another and different one in its place—in other words, would overthrow and destroy the corporate existence of the State, by depriving it of all the means and instrumentalities whereby its existence might and otherwise would be maintained—was held to call for a judgment upon a political question, and would not, therefore, be entertained by the court.

But though the Reconstruction Acts could not be brought before the court for judicial decision, the Judge, in company with the great majority of the legal profession of the country, viewed the acts as unconstitutional and as retarding instead of advancing the peace of the country.

In the famous *Legal-tender Cases* he stood with Chief Justice Chase against the constitutionality of the act of Congress making the promises of the government a legal tender for the payment of debts. He could not agree with some of his associates that Congress possessed the power to make the promise of a dollar the equivalent of a dollar itself. Had that decision, which prevailed in the court by a majority of one, been sustained, it was his opinion that the people would have been spared the financial uncertainty which followed the war, and for a long period depressed the industries of the country. Shortly after the decision, upon the addition of two new Justices to the bench, the question was reopened, and the former decision reversed by a majority of one. This he thought a step backward, and a departure from the sound system established by the Constitution.

In the *Slaughter-house Cases* of New Orleans he went beyond the majority of the court, and gave a wider application to the Fourteenth Amendment of the Constitution, arguing that it was designed to prevent hostile and discriminating legislation against any class of citizens—whites as well as blacks.

The first section of the Fourteenth Amendment is as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The court held, in the case mentioned, that the clause, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," had reference to those privileges and immunities which belong to persons as citizens of the United States as distinguished from citizens of the State, and was of opinion that any other construction would deprive the States of the means of adopting measures which fell strictly within their police powers. The minority of the court, on the contrary, held that the words "privileges and immunities" meant those fundamental rights and privileges which belong to the citizens of all free governments, and that the constitutional amendment prevented their abridgment by the States. The dissenting Justices found fault with the law of Louisiana, under consideration in that case, in that, in a district embracing eleven hundred and fifty-four square miles, and a population of over two hundred thousand inhabitants, it gave to a single corporation, an exclusive right, for twenty-five years, to carry on one of the ordinary occupations of life, that of preparing animal food for market. The minority objected to the act in that it transcended the limits of the police power of the State and asserted a right to farm out the ordinary vocations of life. In its dissenting opinion, the minority, speaking by Justice Field, said: "The State may prescribe such regulations for every pursuit and calling of life as will promote the public health, secure

the good order, and advance the general prosperity of society, but when once prescribed, the pursuit or calling must be free to be followed by every citizen who is within the conditions designated, and will conform to the regulations. This is the fundamental idea upon which our institutions rest, and unless adhered to in the legislation of the country our government will be a republic only in name. The Fourteenth Amendment, in my judgment, makes it essential to the validity of the legislation of every State that this equality of right should be respected."*

* In a subsequent case, Mr. Justice Field, speaking of this case, said: "The oppressive nature of the principle upon which the monopoly here was granted will more clearly appear if it be applied to other vocations than that of keeping cattle and of preparing animal food for market—to the ordinary trades and callings of life—to the making of bread, the raising of vegetables, the manufacture of shoes and hats and other articles of daily use. The granting of an exclusive right to engage in such vocations would be repudiated in all communities as an invasion of common right. The State undoubtedly may require many kinds of business to be carried on beyond the thickly-settled portions of a city, or even entirely without its limits, especially when attendant odors or noises affect the health or disturb the peace of the neighborhood; but the exercise of this necessary power does not warrant granting to a particular class or to a corporation a monopoly of the business thus removed. It may be that, for the health or safety of a city, the manufacture of beer or soap, or the smelting of ores, or the casting of machinery should be carried on without its limits, yet it would hardly be contended that the power thus to remove the business beyond certain limits would authorize the granting of a monopoly of it to any one or more persons. And if not a monopoly in business of this character, how can a monopoly for like reasons be granted in the business of preparing animal food for market, or of yarding and sheltering cattle intended for slaughter?" And again: "The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright." Butchers' Union Co. *v.* Crescent City Co., 111 U. S. 756, 757.

In the case of protection of sealed matter in the mails, he held that letters and sealed packages subject to letter postage in the mail can be opened and examined only under warrant, issued upon oath or affirmation, particularly describing the thing to be seized, the same as is required when papers are subjected to search in one's own household; that the constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers thus closed against inspection wherever they may be. But the law which thus sacredly guards private correspondence is abused and perverted when made a shelter and screen for vice and crime; and he points out in what way, consistently with the constitutional guaranty, the senders through the mails of obscene books and prints may be reached and punished.

Upon the question of the validity of the Thurman Act, relating to the Pacific railroads, he contended for the inviolability of contracts; that an engagement once made by a State or by an individual is sacred, even though it be difficult of fulfilment; that it is the mark of a just government, as of a just man, that it "sweareth to its own hurt and changeth not."*

*In his dissenting opinion the Judge said: "Where contracts are impaired, or, when operating against the Government, are sought to be evaded and avoided by legislation, a blow is given to the security of all property. If the Government will not keep its faith, little better can be expected from the citizen. If contracts are not observed, no property will, in the end, be respected; and all history shows that rights of person are unsafe where property is insecure. Protection to one goes with protection to the other; and there can be neither prosperity nor progress where this foundation of all just government is unsettled. 'The moment,' said the elder Adams, 'the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.' I am aware of the opinion which prevails generally that the Pacific Railroad corporations have, by their accumulation of wealth and the numbers in their employ, become so powerful as to be disturbing and dangerous influences in the legislation of the country; and that they should, therefore, be brought by stringent measures into subjection to

As stated by the legal writer from whom we have already quoted: The principles which underlie all Judge Field's work in interpreting the Constitution, and to which he has constantly adhered, whether acting with the court or dissenting from it, "are summed up in two ideas: *First*, the preservation from every interference or invasion by each other of all the powers and functions allotted to the National Government and the State governments; and, *second*, the perfect security and protection of private rights from all encroachments, either by the United States or by the individual States. These two ideas he has steadily kept in view, and has made the basis of his decisions. He has demonstrated that a constant and firm maintenance of the powers justly belonging to the Federal government is not incompatible with an equally firm upholding of the powers entrusted to the States, with an undeviating adherence to the sacred doctrine of local self-government, and with zealous protection of private rights, because all, in fact, rest upon the same foundation."

Judge Field has now [1892] been nearly thirty years on the bench of the Supreme Court of the United States, and in length of service is the senior Judge. In the decision of the multitude of cases which have come up from year to year, he has taken his full share of labor and responsibility, sometimes writing the opinion of the court, and sometimes dissenting from its views. These opinions, among other things, as already stated, relate to test oaths, military commissions, confiscations, pardons and amnesty, legal-tender notes, legislative power of the insurgent States during the civil war, protection of sealed matters in the mails from inspection by officials, and, it may be added, also, to the power of the State to control compen-

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the State. This may be true; I do not say that it is not; but, if it is, it furnishes no justification for the repudiation or evasion of the contracts made with them by the Government. The law that protects the wealth of the most powerful protects also the earnings of the most humble; and the law which would confiscate the property of the one would in the end take the earnings of the other."

sation for the use of private property, the relation between the General and State governments, the powers and liabilities of corporations, interstate commerce, restraints upon taxation, trust character of directors of corporations, and the use of running waters on public lands, and to a great variety of other subjects. It would require a volume to give even a condensed history of these cases. The most important of them in which opinions were delivered by him for the court, as well as those in which he dissented from its views, are mentioned in a note below.*

* Those in which he delivered the opinion of the court: Cases on the invalidity of test-oaths for past conduct, Cummings *v.* Missouri, 4 Wall. 277, and Ex parte Garland, 4 Wall. 333; cases relating to interstate commerce, and the power of the State concerning it, Welton *v.* Missouri, 91 U. S. 275; County of Mobile *v.* Kimball, 102 U. S. 691; Sherlock *v.* Alling, 93 U. S. 99; Escanaba *v.* Chicago, 107 U. S. 678; Miller *v.* Mayor of New York, 109 U. S. 385; Cardwell *v.* American Bridge Co., 113 U. S. 205; Gloucester Ferry Co. *v.* Pennsylvania, 114 U. S. 196; and Huse *v.* Glover, 119 U. S. 543; cases on questions growing out of the civil war, such as the protection of officers and men of the United States Army in the enemy's country against civil proceedings for damages, the attempt of the Confederate States to confiscate debts due the citizens of loyal States, and the extent of liability of the United States for property taken or destroyed, Williams *v.* Bruffy, 96 U. S. 176; Coleman *v.* Tennessee, 97 U. S. 509; Dow *v.* Johnson, 100 U. S. 158; Pacific Railroads *v.* United States, 120 U. S. 227; and the Tarble Case, 13 Wall. 397; cases on constitutional questions particularly affected by the Fourteenth Amendment, Barbier *v.* Connolly, 113 U. S. 27; Soon Hing *v.* Crowley, 113 U. S. 703; Missouri Pacific Railway Co. *v.* Humes, 115 U. S. 512; Hayes *v.* Missouri, 120 U. S. 68; cases on State, city, and county bonded indebtedness, United States *v.* New Orleans, 98 U. S. 381; Hartman *v.* Greenhow, 102 U. S. 672; Pilsbury *v.* Louisiana, 105 U. S. 278; Broughton *v.* Pensacola, 93 U. S. 266; cases on patents of the United States upon confirmed Mexican grants and for public lands and mining claims, Beard *v.* Federy, 3 Wall. 478; Smelting Co. *v.* Kemp, 104 U. S. 636; Steel *v.* Smelting Co., 106 U. S. 447; cases on mining claims and water rights, Jennison *v.* Kirk, 98 U. S. 453; Atchison *v.* Peterson, 20 Wall. 507; Basey *v.* Gallagher, 20 Wall, 670; cases on the power of a State to prescribe the conditions on which foreign corporations may do business within its limits, Paul *v.* Virginia, 8 Wall. 168, and Pembina Consolidated Silver Mining Co. *v.* Pennsylvania, 125 U. S. 181; on proceedings in State courts against non-resident debtors, Pennoyer *v.* Neff, 95 U. S. 714; on the invalidity of contracts for the use of influence with public officials, Oscanyan *v.* Arms Co., 103

From the time Judge Field went on the Federal bench up to the creation of Circuit Courts of Appeals, he held court in his circuit, consisting of California, Oregon, and Nevada, every year except three, two of which he was absent from the country, and during one of which he was not in good health, although since 1869 he was only required by law to sit in each district of the circuit once

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U. S. 261; on Federal jurisdiction over lands used for public purposes of the United States government within the States, Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S. 525, and Leavenworth and Chicago and Rock Island R. R. Co. *v.* McGlinn, Ibid. 543; on the removal of a cloud upon title by a suit in equity of a party in possession, Holland *v.* Challen, 110 U. S. 15; on the responsibility of railroad corporations to their employés for injuries inflicted in consequence of negligence of train conductors, Chicago and Milwaukee Railroad Co. *v.* Ross, 112 U. S. 377; on protection of sealed matter in the mails, Ex parte Jackson, 96 U. S. 727; on the exemption of a passenger in a public conveyance from liability for the negligence of the driver, Little *v.* Hackett, 116 U. S. 366; on the power to take private property for public use in the exercise of the right of eminent domain as an incident of sovereignty belonging to every independent government and existing in the Government of the United States, United States *v.* Jones, 109 U. S. 513; on construction of certain treaties, Whitney *v.* Morrow, 112 U. S. 693; Whitney *v.* Robertson, 124 U. S. 191; on the Houmas Spanish grant and construction of certain statutes, Slidell *v.* Grandjean, 111 U. S. 412; on the ownership by the State, on her admission to the Union, of the lands under tide-waters within her limits not previously granted, Weber *v.* Harbor Commissioners, 18 Wall. 57; on the right of the States to swamp and overflowed lands within their limits, Wright *v.* Roseberry, 121 U. S. 488; on the power of Congress to cancel a treaty, and the circumstances which may justify such action, The Chinese Exclusion Case, 130 U. S. 581; on the power of Congress to invest consular tribunals, in other than Christian countries, with the power to try and punish criminal offences there committed by citizens of the United States, In re Ross, 140 U. S. 453; in San Francisco *v.* Le Roy, 138 U. S. 656, as to the right of the city, as the successor of the pueblo, to tide-lands within its confirmed boundaries, (see also concurring opinion in Knight *v.* U. S. Land Association, 142 U. S. 189;) and in Bardon *v.* Northern Pacific Railroad Co., 145 U. S. 535, on the segregation from the public of lands within the limits of a grant, by reason of a prior pre-emption claim, and the effect of the cancellation of the pre-emption right before location of the grant; on contracts between two citizens of the United States, residing in loyal States, respecting cotton owned by one of them in the insurgent States, Briggs *v.* United States, 143 U. S. 346; on the power of a State to exact from parties, before they

every two years. His circuit, as now constituted, embraces six States. Besides California, Oregon, and Nevada, the States of Washington, Idaho, and Montana have been added to it. In going and coming, and in his circuit, he has always travelled nine thousand miles a year, and sometimes a much greater distance, the expense of which, since 1871, he has been obliged to bear himself. When

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can practice medicine, a degree of skill and learning in that profession, upon which the community employing their services may confidently rely, and to require them to obtain a certificate or license from a board or other authority competent to judge in that respect, Dent *v.* West Virginia, 129 U. S. 114; on the liability for damages accruing by allowing cattle to run at large and spread disease, Kimmish *v.* Ball, 129 U. S. 217; on the validity of legislation imposing damages double the value of the stock killed by a railroad company on a road where the corporation had a right to erect a fence and failed to do so, Minneapolis & St. Louis Railway Co. *v.* Beckwith, 129 U. S. 26; on the liability of a party indicted in one State escaping or carried to another State to be indicted and tried in the latter State for an offence there committed without being surrendered to the former State, Mahon *v.* Justice, 127 U. S. 700; involving a question of boundary between two States, Indiana *v.* Kentucky, 136 U. S. 479; upon the title of owners of land bordering on navigable rivers, above the ebb and flow of the tide, to the middle of the stream, Packer *v.* Bird, 137 U. S. 661; upon the taxation by a State of the franchise or business of a corporation incorporated under the law of the State or of another State and doing business within it, Home Insurance Company *v.* New York, 134 U. S. 594, and Maine *v.* Grand Trunk R. R. Co., 142 U. S. 217, and Horn Silver Mining Company *v.* New York State, 143 U. S. 305; on the effect of a conveyance of property confiscated under the law of the United States, accompanied with a deed of warranty from the offending party after his release by pardon of the offences for which the confiscation was had, Jenkins *v.* Collard, 145 U. S. 547, on the validity of imposing a burden of a public service upon a corporation in consequence of its creation and of the exercise of privileges obtained at its request, Charlotte, Columbia and Augusta R. R. Co. *v.* Gibbes, 142 U. S. 386; on the distinguishing feature of a suit in admiralty, in that the vessel or thing proceeded against is itself seized or impleaded as a defendant, whereas, by the common law process, property is reached only through a personal defendant, and then only to the extent of his title, in the Moses Taylor, 4 Wall. 411; and on the inapplicability of the doctrine of the common law as a test of the legal navigability of waters in this country; here the ebb and flow of the tide not constituting, as in England, such test, in the Daniel Ball, 10 Wall. 557.

Cases in which Judge Field has dissented from the views of the court:

the circuit was originally created an allowance was made by law of one thousand dollars a year for his travelling expenses, but in 1871 this allowance was cut off.

In his circuit he has been called upon to pass upon numerous questions of great moment. His most important opinions there decided are in the cases stated in a note below.*

The Slaughter-house cases, 16 Wall. 83; (see also his concurring opinion in Butchers' Union Co. *v.* Crescent City Co., 111 U. S. 754;) the Legal-Tender cases, 12 Wall. 634, and 110 U. S. 451; the Confiscation cases, 11 Wall. 314 and 349; the Sinking Fund cases, involving the validity of the Thurman Act, 99 U. S. 750; the Elevator case, Munn v. Illinois, 94 U. S. 136, involving the validity of legislation fixing prices for the use of private property; the Virginia Judge case, Ex parte Virginia, 100 U. S. 340; the Provost Marshal case, Beckwith *v.* Bean, 98 U. S. 285; the Louisiana Debt cases, Louisiana *v.* Jumel, 107 U. S. 728; the Virginia Debt case, Antoni *v.* Greenhow, 107 U. S. 784; and in the Attorney's case, Ex parte Wall, 107 U. S. 290; the telegraph case, Pensacola Telegraph Co. *v.* Western Union Telegraph Co., 96 U. S. 14; the Spring Valley water case, Spring Valley Water Works *v.* Schottler, 110 U. S. 356; in the Chinese Restriction case, Chew Heong *v.* United States, 112 U. S. 536; in the case of the Bridge Co. *v.* United States, 105 U. S. 470, against the absolute control by the United States of bridges constructed by authority of a State on navigable waters within its limits; their control, as contended, limited to the protection and improvement of the free navigation of those waters; in Powell *v.* Pennsylvania, 127 U. S. 678, against the asserted power of the State to prohibit the right of the individual to manufacture a healthful article of food; in McAllister *v.* United States, denying the power of the President to remove from office a judge of a territory during his term prescribed by Congress, (141 U. S. 174;) in Boyd *v.* The State of Nebraska and Thayer, against the jurisdiction of the Supreme Court to determine a disputed question as to the right to the governorship of a State, (143 U. S. 182;) in O'Neil *v.* Vermont, against the Supreme Court, denying its jurisdiction in a case involving a question of interstate commerce, and where the punishment imposed was cruel and unusual, (144 U. S. 337;) and in Iron Silver Mining Co. *v.* Mike and Starr Gold and Silver Mining Co., (143 U. S. 394,) against the definitions made of "known lodes or veins" of gold and silver.

* In the Pueblo case of the City of San Francisco *v.* United States, (4 Sawyer, 553,) involving its claim to four square leagues of land, under the laws of Mexico, on the peninsula on which the city is situated; in Montgomery *v.* Bevans, (1 Id. 653,) upon the power of alcaldes of San Francisco to make grants of land within the city limits, and upon the presumption of life during the absence of a party unheard from for seven

Of the estimate which should be placed upon the judicial character and labors of Judge Field, we have the opinion of Professor Pomeroy, contained in an introductory sketch to an account of his legislative and judicial work, published in 1881. No one was more competent, both from his professional standing, eminent abilities, and thorough knowledge of the opinions and labors of Judge Field, to pass judgment upon his judicial character. After the Judge had been eighteen years on the bench of the Supreme Court of the United States, Professor Pomeroy wrote an extended review of his opinions and judicial character, from which the following is taken:

"It would be a comparatively easy task for one who was personally a stranger to Judge Field, and was only acquainted with him through his reported decisions, to form a correct estimate of

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years; In re Ah Fong, (3 Id. 144,) upon the exclusion of foreign emigrants by commissioners for previous bad moral character or for inability to support themselves under a law of California; in Patterson *v.* Tatum, (3 Id. 164,) on the grant by Congress to the State of 500,000 acres and the effect of selections from the land under the legislation of the State; in the Eureka Mining case, (4 Id. 302,) relating to mining veins and lodes of gold and silver; in United States *v.* Flint and *v.* Throckmorton, (4 Id. 42,) involving a consideration of the validity of decrees of the special tribunals in Mexican land cases, and the grounds upon which such decrees can be impeached; in Hardy *v.* Harbin, (4 Id. 536,) showing that the holder of the legal title to land acquired by fraud may be converted into a trustee of the true owner and compelled to convey the title to him; in the Tax Cases of the County of San Mateo *v.* Southern Pacific Railway Company, (8 Id. 238,) and the Santa Clara Railroad Tax Case, (9 Id. 165,) involving a consideration of the effect of the Fourteenth Amendment in requiring equality and uniformity in the assessment of property of railroads as well as of individuals; in the case of the Pacific Railway Commission, (12 Id. 559,) involving the question of the right of Congress to inquire into the private affairs of the Pacific Railway Companies in matters not connected with railways; in the case of Denny *v.* Dodson, involving the construction of the Northern Pacific Railway Acts, (13 Id. 68;) in the case of Sharon's Executors *v.* David S. Terry and Sarah Althea Terry, his wife, reviving a suit in equity, abated by the death of the complainant, for the purpose of executing a final decree which had been rendered in such suit, (13 Id. 387;) and in the Terry Contempt Case, (Id. 440.)

his judicial character. Its important elements, those which distinguish him from the other judges, and which constitute the special grounds of his success and of his power, stand out in clear-cut lines upon all the creations of his official labors. He has stamped himself—his intellectual and moral features—deeply into all the work which he has done. From my own personal acquaintance with him, but chiefly from a careful study of all his important judgments rendered both while a member of the State Court, and after his transfer to the National Judiciary, I have arrived at the following conclusions, which I unhesitatingly submit as the most striking and distinctive elements of his judicial character and work. They are undoubtedly the very qualities which, in our system of jurisprudence, steadily developing through the creative functions of the courts, mark the ideal judge—the qualities which have been held by, and which admit him to be ranked with, the very foremost class of jurists who have set upon the English and American bench. . . . .

"In the first and lowest place, he possesses *an ample legal learning.* It cannot be pretended that he has that exact knowledge of technical common-law dogmas which distinguished such a judge as Lord Kenyon or Baron Parke, or of the intricate minutiæ of real estate and conveyancing law which alone gave Lord Eldon his pre-eminence among English chancellors—a sort of knowledge which with a certain pedantic school has passed for the highest legal learning, but which is worse than useless rubbish for the American judge of to-day. Judge Field's learning, as a distinctive feature of his intellect, is rather the capacity in an extraordinary degree to acquire the new knowledge made necessary by the demands of his position—the capacity to investigate sources and systems of jurisprudence hitherto unknown, to sift truth from error, to extract whatever there is of living principle, and to appropriate and to assimilate the materials thus obtained with the State or National law which he is administering. He brought to the bench a mind stored with the doctrines of the common law and of equity, great intellectual vigor, and a most remarkable capacity for rapid and sustained mental labor. The exigencies of his position required him to investigate the Spanish-Mexican Codes, which furnished the authoritative rules concerning 'pueblos,' with all the municipal and proprietary rights flowing therefrom and concerning the Mexican governmental

grants to private owners, and also to create general principles and doctrines for which the common law and equity of England and the United States afforded very few if any analogies. It is enough to say that his learning, his intellectual power, and his thorough and accurate study of foreign systems were always adequate to meet the requirements of the occasion. . . . .

"The second and much more important element which I shall notice, is his *devotion to principle*—that quality of intellect which leads him, on all judicial occasions, to seek for, apprehend, and appreciate principles, rather than to rest satisfied with mere rules, although sustained by precedent, and to apply firmly these principles where found in all their relations and consequences—to place his decisions upon the solid basis of fundamental and universal principles, rather than upon arbitrary dogmas. This quality gives a most marked unity, consistency, and universality to his decisions, not only to those connected with some single branch of the law, but to those belonging to any and all departments. His adjudications generally will thus be found related to each other, harmonious, corresponding parts of one completed system. This method of adhering to principle as the sure and constant guide in ascertaining, interpreting, and applying the law is the immediate and efficient cause of that most remarkable consistency which runs through all his judicial utterances. I shall have occasion to speak more in detail of this special feature of consistency, when describing his judgments upon questions of constitutional law; and although it appears, perhaps in the most striking manner, in that class of cases, it is still a distinguishing mark of all his work. The power of discovering, apprehending, and applying principles is the highest *intellectual* faculty of the ideal judge; it takes the place of, and is universally superior to, any amount of mere learning; it is the very essence of the best learning which can be employed in the judicial station. . . . As has already been said, many of his judgments, pronounced while in the State court, relate to matters of purely local interest, such as the peculiar land titles of California, the Mexican pueblos, the ownership of gold and silver *in situ*, mining and water rights, etc.; and this class of cases undoubtedly required for their decision the greatest amount of original investigation, tracing of obscure analogies, and creative power, and expenditure of intellectual force which can hardly be appreciated by the profession in other

parts of the country who are unfamiliar with the intricate questions involved. On the other hand, many of his opinions deal with subjects of universal interest, as, for example, the powers and liabilities of municipal and of private corporations, the nature of mortgages, the validity of Sunday laws, etc. These judgments have uniformly been regarded by the profession and courts of other States, and by text-writers, as having the highest authority. . . .

"The third distinctive element requiring special notice is what may appropriately be called his *creative power*. By this designation I mean his ability in developing, enlarging, and improving the law, by additions of new material, whether this material be borrowed from foreign sources or created by means of the legislative function belonging to all superior courts. The intellectual attributes referred to in this and in the preceding head are entirely distinct; they may co-exist in the same individual, or the first may be possessed in a high degree without the other. The first deals with the jurisprudence as it has already been established, investigating, examining, and expounding or applying its settled principles and doctrines; the other is creative and legislative, employed in constructing new law, or reforming and expanding that which already exists. . . . . Judge Field's peculiar talent as a legal reformer was shown in his purely legislative work done while a member of the State Assembly, and described in a previous division of this essay. He exhibited the same power and tendency upon the bench. They were shown in his constant rejection of ancient common-law dogmas, no matter how firmly settled upon authority, which had become outgrown, obsolete, and unfitted for the present condition of society, and in the substitution of more just, consistent, and practical doctrines adapted to the needs of our own country and people. I merely mention, as sufficient examples of this class, his decisions upon the nature and effect of mortgages, and those concerning the ownership of gold and silver while in the soil, by which he boldly swept away the common-law rules on the subject, with all the absurd reasoning upon which they had been founded. . . . .

"The fourth element of his judicial character is his *fearlessness*. As the power to apprehend and apply principles is the highest *intellectual* quality, so is a true fearlessness the highest *moral* attribute of the ideal judge. No other American judge has so often been called upon to face popular opposition in the decision of

controversies involving important legal questions, in which large masses of the population were interested, and on one side of which all their passions, prejudices, and selfish motives were fully aroused, and often were raging in the fiercest manner; and no other judge has more frequently and faithfully discharged his sacred duty of deciding according to his own enlightened convictions of law and justice, in complete oblivion of all external forces, and in absolute fearlessness of the consequences. He has neither courted personal popularity nor shrunk from unpopularity by means of his decisions. He could well apply to himself the memorable and noble language which Lord Mansfield used from the bench when made the object of a violent clamor on account of his decisions: 'I will do my duty unawed. What am I to fear? The lies of calumny carry no terror to me. I trust that my temper of mind, and the color and conduct of my life, have given me a suit of armor against these arrows. . . . I wish popularity, but it is that popularity which follows, not that which is run after; it is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means.'

"No friend of Judge Field can estimate his intellectual and moral fearlessness too highly; no enemy can deny, or ever has denied, that he possessed it. He has repeatedly encountered, and been compelled to endure, the bitter hostility of extreme partisans belonging to the most opposite schools of opinion; of extreme Republicans and extreme Democrats; of those who maintain the dogma of State sovereignty, and of those who assert the absolute legislative power of the national government; of ignorant and prejudiced masses, and of scheming speculators who would disregard all law and right in order to accomplish their purposes. All these outbursts of opposition have, however, died away; the justice and wisdom, as well as the law, of his decisions are vindicated. That true popularity has succeeded, among all intelligent persons, which in the words of Lord Mansfield, 'never fails to do justice to the pursuit of noble ends by noble means.' . . . . Any correct account of the decisions made in the State Supreme Court concerning the pueblo of San Francisco and the titles derived from the municipality; concerning the occupation of public lands; concerning the State ownership of gold and silver, and the claims of miners to enter upon all lands, private as well as public, in search for the precious metals; concerning the rights of Mexican

grantees and the intruders upon their lands, and concerning the validity of certain acts done by the municipal government of San Francisco, will exhibit in the clearest manner the quality of rectitude and fearlessness which is such a distinctive element of his character. In many of the decisions rendered in the United States Supreme Court, indirectly growing out of the Civil War, and directly out of Congressional legislation enacted in consequence of the war, including those dealing with the validity of test-oaths, the extent and limitations of martial law, the trials of civilians by military tribunals, the suspension of the writ of *habeas corpus*, and similar questions affecting the very foundations of our political institutions and of our civil liberties—the same quality was exhibited from a higher station and in the presence of the whole nation."

In the summer of 1873 Judge Field was appointed by the Governor of California, in connection with two other persons, to examine the Codes of the State, and prepare such amendments as seemed necessary for the consideration of the Legislature. The Codes had been reported by a commission in the previous year, which had adopted them principally from the reports of the New York commission. There was some conflict in the provisions of the different Codes which prevented their harmonious working. It was thought by the bar and profession in the State that if Judge Field would undertake it, the conflicting provisions could be, by proper amendment, removed. At their suggestion, the Governor appointed him and Mr. John W. Dwinelle and Mr. Jackson Temple commissioners. They entered upon the labor with great cheerfulness, and prosecuted it during the summer of 1873, and made a report to the Legislature, with the drafts of several bills. Nearly all the amendments proposed were adopted by the Legislature, and since then the Codes have worked well in the State.

In the beginning of the year 1877 the Supreme Court of the United States, then sitting in Washington, arrested its session for a case which had no precedent in the history of the Government. There was a disputed Presi-

dential election. The country was greatly excited, Congress was divided, the Senate being Republican and the House Democratic. To meet a crisis for which the Constitution made no provision, a law was passed creating an Electoral Commission, composed of five Justices of the Supreme Court, five Senators, and five Representatives. In the act of Congress Judge Field was designated one of the Commissioners, and sat in the deliberations upon the question whether Mr. Tilden or Mr. Hayes was entitled to the electoral votes of certain States. On their decision it was to depend who was to be President for the next four years. The history of that Commission is well known. The Commissioners refused to go behind the certificates forwarded from the different States, which declared certain persons to have been appointed electors, and considered that their duty was simply to announce the result of those certificates; when, by the very terms of the act creating the Commission, they were required to determine—not merely who had certificates of election—but who had been duly chosen. The position taken by some of the Commissioners appeared to him to be monstrous, and he expressed his opinion without qualification.*

* To the alleged conclusiveness of the certificate the Judge replied:

"A certificate is only *prima facie* evidence of the fact certified. Indeed, I venture to assert, without fear of successful contradiction, that, in the absence of positive law declaring its effect to be otherwise, a certificate of any officer to a fact is never held conclusive on any question between third parties; it is always open to rebuttal. There are, indeed, cases where a party who has been induced to act upon the certificate of a fact may insist that the truth of the certificate shall not be denied to his injury, but those cases proceed upon the doctrine of estoppel, which has no application here. The fact here to be ascertained is, who have been duly appointed electors of the State of Florida, not who have the certificates of appointment. It is the election, and not the certificate, which gives the right to the office. The certificate, being only evidence, can be overcome by any evidence which is in its nature superior. And this is equally true of the certificate issued under the law of the State as of the certificate issued under the act of Congress. And it is equally true of the certificate of the Board of Canvassers. Those officers exercised mere ministerial functions; they possessed no judicial power; their

In the year 1880 the name of Judge Field was prominently before the country as a candidate for the Presidency. He had always been a Democrat, and, except during the Civil War, uniformly acted with the Democratic party. When the war broke out, he ranged himself on the side of the Government, and gave earnest support to the administration of Mr. Lincoln. Some of his friends think he contributed as much as any one to keep California in the Union; certainly he was one of a few

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determination had none of the characteristics or conclusiveness of a judicial proceeding; it had been so decided by the Supreme Court of the State. And yet, in the opinion of the distinguished Commissioner from Indiana, [Senator Morton,] and some other Commissioners from the Senate and House appear to concur with him, the determination of those canvassers, as expressed by their certificate, is more sacred and binding than the judgment of the highest court of the land, incapable of successful attack on any ground whatever.

"I put, yesterday, to these gentlemen this question: Supposing the canvassers had made a mistake in addition in footing up the returns, a mistake that changed the result of the election, and acting upon the supposed correctness of the addition they had issued a certificate to persons as electors who were not in fact chosen, and such persons had met and voted for President and Vice-President, and transmitted the certificate of their votes to Washington, and afterwards, before the vote was counted by the two Houses of Congress, the mistake was discovered—was there no remedy? The gentlemen answered that there was none; that whatever mistakes of the kind may have been committed must be corrected before the vote was cast by the electors, or they could not be corrected at all. If this be sound doctrine, then it follows that by a clerical mistake in arithmetical computation a person may be placed in the Chief Magistracy of the nation against the will of the people, and the two Houses of Congress are powerless to prevent the wrong.

"But the gentlemen do not stop here. I put the further question to them: Supposing the canvassers were bribed to alter the returns, and thus change the result, or they had entered into a conspiracy to commit a fraud of this kind, and in pursuance of the bribery or conspiracy they did in fact tamper with and alter the returns, and declare as elected persons not chosen by the voters, and such persons had voted and transmitted their vote to the President of the Senate, but before the vote was counted the fraud was detected and exposed—was there no remedy? The gentlemen answered, as before, that there was none; that whatever fraud may have existed must be proceeded against, and its success defeated before the electors voted; that whatever related to their action

persons who accomplished this. But when the war was ended, he was for peace—actual peace—not one in name only. All the oppressive measures taken by the Republican party towards the South, known as Reconstruction Acts, under which carpet-bag rule was inaugurated and sustained, with all its attendant and subsequent corruption and plunder, were to him the object of detestation. He expressed opposition to these measures, and his course on the bench against test oaths, confiscation acts, and the like harsh proceedings attracted the attention of the country, and before the meeting of the convention at Cincinnati to nominate a candidate for Presidency no name

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was then a closed book. If this be sound doctrine, it is the only instance in the world where fraud becomes enshrined and sanctified behind a certificate of its authors. It is elementary knowledge that fraud vitiates all proceedings, even the most solemn; that no form of words, no amount of ceremony, and no solemnity of procedure can shield it from exposure and protect its structure from assault and destruction. The doctrine asserted here would not be applied to uphold the pettiest business transaction, and I can never believe that the Commission will give to it any greater weight in a transaction affecting the Chief Magistracy of the nation.

"But the gentlemen do not stop here. I put the further question to them: Supposing the canvassers were coerced by physical force, by pistols presented to their heads, to certify to the election of persons not chosen by the people, and the persons thus declared elected cast the vote of the State—was there no remedy? and the answer was the same as that given before. For any wrong, mistake, fraud, or coercion in the action of the canvassers, say these gentlemen, the remedy must be applied before the electors have voted; the work of the electors is done when they have acted, and there is no power under existing law by which the wrong can be subsequently righted.

"The canvass of the votes in Florida was not completed until the morning of the day of the meeting of the electoral college, and within a few hours afterwards its vote was cast. To have corrected any mistake or fraud during these hours, by any proceeding known to the law, would have been impossible. The position of these gentlemen is, therefore, that there is no remedy, however great the mistake or crime committed. If this be sound doctrine, if the representatives in Congress of forty-two millions of people possess no power to protect the country from the installation of a Chief Magistrate through mistake, fraud, or force, we are the only self-governing people of the world held in hopeless bondage at the mercy of political jugglers and tricksters."

was more conspicuous than his. On the first ballot he received sixty-five votes. He had assurances from various portions of the country, and from men who were members of the convention, that he would receive, at a very early stage of the proceedings, over two hundred and fifty votes. It is quite probable that such would have been the case, had he been earnestly supported by his own State. This might have been expected by one who had received such proofs of his popularity, not only in the State, as were given in his immense majority of the popular vote when a candidate for the Supreme bench in California, but generally on the Pacific Coast, as was shown in the unanimous recommendation of the Pacific delegation for his appointment to the bench of the Supreme Court of the United States. But when the convention in California assembled to choose delegates to the National Convention it was found that a very strong element of opposition had arisen to the candidacy of Judge Field, from his supposed opinion in favor of Chinese immigration, a feeling which had been, to a very great extent, created by his decision in the famous "Queue case," which arose in this wise: The Legislature of the State had passed, in April, 1876, an act concerning lodging houses and sleeping apartments within the limits of incorporated cities, declaring, among other things, that any person found sleeping or lodging in a room or an apartment containing less than five hundred cubic feet of space in the clear, for each person occupying it, should be deemed guilty of a misdemeanor, and, upon conviction thereof, should be punished by a fine of not less than ten nor more than fifty dollars, or imprisonment in the county jail, or by both such fine and imprisonment.

The plaintiff in the "Queue case" was convicted and sentenced under this act to pay a fine of ten dollars, or in default of such payment to be imprisoned five days in the county jail. Failing to pay the fine, he was imprisoned. The defendant, as sheriff of the city and county of San

Francisco, had charge of the jail, and during the imprisonment of the plaintiff cut off his queue. This he did under the assumed authority of an ordinance passed by the city of San Francisco declaring that every male person imprisoned in the county jail, under the judgment of any court having jurisdiction in criminal cases in the city and county, should, immediately upon his arrival at the jail, have the hair of his head "cut or clipped to an uniform length of one inch from the scalp thereof," and made it the duty of the sheriff to have this provision enforced. The plaintiff thereupon sued the sheriff. In his complaint he alleged that it was the custom of Chinamen to shave the hair from the front of the head and to wear the remainder of it braided into a queue; that the deprivation of the queue was regarded by them as a mark of disgrace, and was attended, according to their religious faith, with misfortune and suffering after death; that the defendant knew of this custom and religious faith of the Chinese, and he knew that the plaintiff venerated the custom and held the faith; yet, in disregard of his rights, inflicted the injury complained of, and that the plaintiff in consequence thereof suffered great mental anguish, had been disgraced in the eyes of his friends and relatives, ostracized from association with his friends and countrymen, and had been damaged to the amount of ten thousand dollars, and he brought suit for the same. The defendant set up as a justification of his action the ordinance of the city and county of San Francisco, and the plaintiff demurred. The ordinance was presented to the court in two aspects: First, as a punishment, and, second, as a sanitary measure. As a punishment, Judge Field held that the supervisors could not add to that which the State had prescribed for violation of the "cubic air law," which was fine or imprisonment. The supervisors thought that if they could add to it, the cutting off of the queue, they would inspire the Chinese with such terror that it would induce them to

pay the fines imposed rather than to suffer imprisonment, which would discharge the fine at the rate of two dollars per day. Probably, as said by the judge in his opinion, "the bastinado, or the knout, or the thumbscrew, or the rack would accomplish the same end; and no doubt the Chinaman would prefer either of these means of torture to that which entails upon him disgrace among his countrymen, and carries with it constant dread of misfortune and suffering after death."

Judge Field held that the supervisors were not invested by the Legislature with any such power. As a sanitary measure, the Judge held that under the law then existing it was not for the board of supervisors to prescribe what regulations should be adopted for the health of prisoners sent to jail, but for the Board of health, which alone possessed authority to prescribe the necessary sanitary measures.

The Judge went further, and considered the measure as one directed especially against the Chinese. The records of the supervisors, the communications of the mayor, and the debates of the members showed that the measure was intended solely for the Chinese, and not for all persons. The ordinance directing it was called the *Queue Ordinance.* It was not enforced against others. It was directed and enforced solely against the Chinese. It was held that contemporary history was admissible to show the object of legislation; that only in that way were general terms, used in the legislation of the South when slavery existed, limited. With statutes declaring the equality of all men, slavery could not otherwise have existed.

The Queue ordinance, considered in the light of the history attending its passage, was treated as special legislation on the part of the supervisors directed against a class, and as imposing upon the Chinese a degrading and cruel punishment, and as such Judge Field held that it was forbidden by that clause of the Fourteenth Amend-

ment to the Constitution which declares that no State "shall deny to any person within its jurisdiction the equal protection of the laws." He was of opinion that this inhibition upon the State applies to all the instrumentalities and agencies employed in the administration of its government; to its executive, legislative, and judicial departments; and to the subordinate legislative bodies of its counties and cities. All this seems plainly and obviously just; and yet such was the feeling against the Chinese, that the decision created great bitterness towards the Judge, and lost him half the vote of California in the National Convention. It prevented an united presentation of his name before the convention. But little did that disturb him. He followed his own sense of right, and left consequences to take care of themselves. Could he have foreseen the result of his decision in its effect upon his political fortunes, he would not have decided otherwise, nor delayed the decision a single hour.

Judge Field had never favored the indiscriminate immigration of Chinese. He had seen the difficulties of races so different from each other as the Caucasian and the Mongolian living in peace and working in harmony, side by side, but he knew that the treaty between the United States and Chinese governments pledged the honor of our country that the subjects of that empire should have all the privileges and immunities of subjects of the most favored nation, and he opposed all legislation of the State which sought to deprive the Chinese laborers of the protection which the treaty afforded. He said that the power to determine what foreigners should be permitted to come into the country, and to remain here, was not in the State but in the General Government, and that the State could not interfere with the General Government's control in the matter. That if Kentucky, for example, wished to have Chinese come into it, the State of California could not forbid it; that the only power which

could assent or dissent from that measure was the General Government. He therefore set aside, or prohibited, the enforcement of such State laws or city ordinances as interfered with the full enjoyment of the privileges and immunities which the treaty with China stipulated. The fact that he thus decided created the impression that he himself was in favor of the immigration of Chinese laborers; at any rate, politicians thus charged him, and succeeded in creating such a general impression. But, on the contrary, he was not in favor of indiscriminate immigration of Chinese. He thought that Chinese laborers should be excluded, and the admission of others restricted in many particulars. In fact, his sentiments on that subject were in accordance with the general opinion which now prevails.

This political campaign was a novel experience. His candidacy was not a matter of his own seeking; it was urged upon him by friends who thought that if elected he might do something to bring the two sections of the country into more amicable relations than had for a long time existed.

As the year 1884 approached, the name of Judge Field was again frequently mentioned as a candidate for the Presidency. But many causes contributed to render such a candidacy unadvisable, and no one perceived this clearer than himself. Popular opinion is very apt to attribute to a judicial officer the approval of measures which he only decides to be constitutional, that is, within the legislative power under the Constitution. He is therefore often condemned by persons from a mere consideration of the wisdom and policy, or want of wisdom and the impolicy of such measures. The Judge's course in maintaining the rights and privileges of the Chinese in the country, under the treaty with the Chinese empire, was almost universally attributed to his favoring the immigration into the country of Chinese laborers, and yet nothing could be farther from the truth.

So, also, a disposition to favor the great landholders, under Mexican grants, against settlers was ascribed to him because he regarded the stipulations of the treaty with Mexico for the protection of the property of such holders as obligatory upon the court. He, of course, could not consider the policy or wisdom of making such large grants by the Mexican government. The only question with him was as to their validity and extent. These matters being ascertained, his legal duty was plain, though great hardships sometimes followed, and necessarily, from his decisions. Of the immigrants who came to California upon the discovery of gold, a large number sought farming lands upon which to settle, and they looked upon the large grants of the Mexican government—many of them embracing several square leagues of land—as a wrong, which they could not appreciate and to which they could not be reconciled. In many cases they denounced the validity of the grants, and, when in any case they admitted one to be valid, if its boundaries embraced a greater quantity than that specially granted, they would often undertake to locate the surplus and then to appropriate it, not seeing that if one immigrant could determine that what he took was a portion of such surplus, another immigrant might, with equal right, determine that another portion was a part of such surplus and take possession of it, and that thus by several settlers, each selecting what he deemed to be the surplus, the grantee might be deprived of his entire property.* It was the duty of the officers of the Mexican government to survey and measure off the actual quantity granted and deliver it to the grantee, leaving the surplus open to the public, and that duty, when not exercised by the former government,

* "And thus," as said by the Supreme Court, "the confirmees would soon be stripped of the land which was intended by the government as a donation to its grantees, whose interests they have acquired, for the benefit of parties who were never in its contemplation." (Van Reynegan *v.* Bolbia, 95 U. S. 36.)

devolved upon the new government, yet it was neglected in many cases for years, leaving the title unsettled and leading to harassing litigation. The Judge, in protecting the rights of grantees, naturally drew upon him the hostility of all who sought to settle upon the lands of others, and was often denounced in unmeasured terms as controlled by monopolists and land grabbers.

There was also another great cause of discontent with him at this time, and that was his application of the Fourteenth Amendment, declaring that "no State shall deny to any person the equal protection of the laws," to the taxation of railway property. The constitution of California required the deduction of mortgages in the assessment of property of individuals for taxation, the mortgages to be assessed and taxed against the mortgagees, and the value of the property after such deduction to be assessed and taxed against the owner of the fee. But this mode of assessment and valuation of property was not made applicable to property of railroads and public corporations. Judge Field disregarded this distinction, and applied the rule of uniformity to the property of railroad corporations as well as that of individuals.* This drew

*In illustration of the inequality produced, the court, by Judge Field, said: "Whenever an individual holds property encumbered with a mortgage he is assessed at its value, after deducting from it the amount of the mortgage. If a railroad company holds property subject to a mortgage, it is assessed at its full value, without any deduction for the mortgage; that is, as though the property were unencumbered. The inequality and discriminating character of the procedure will be apparent by an illustration given by counsel. Suppose a private person owns a farm which is valued at $100,000, and is encumbered with a mortgage amounting to $80,000; he is, in that case, assessed at $20,000; if the rate of taxation be two per cent. he would pay $400 taxes. If a railroad corporation owns an adjoining tract worth $100,000, which is also encumbered by a mortgage for $80,000, it would be assessed for $100,000, and be required to pay $2,000 taxes, or five times as much as the private person. There is here a discrimination too palpable and gross to be questioned, and such is the nature of the discrimination made against the Southern Pacific Railroad Company in the taxation of its property. Nothing can be clearer than that the rule of equality and uniformity is thus entirely disregarded.

upon him a great deal of abuse, particularly from the Democratic party. Their papers were filled with denunciations of him, which were especially fierce and gross

"The Fourteenth Amendment of the Constitution, in declaring that no State shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the State, which can touch the individual or his property, including among them that of taxation. Whatever the State may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws, and by equal protection of the laws is meant equal security under them to every one on similar terms, in his life, his liberty, his property, and in the pursuit of happiness. It not only implies the right of each to resort, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also his exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances.

"Unequal exactions in every form, or under any pretense, are absolutely forbidden; and, of course, unequal taxation, for it is in that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws, where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where, for instance, one may be taxed at one per cent. on the value of his property, another at two or five per cent., or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property.

"Though the occasion of the amendment was the supposed denial of rights in some States to newly-made citizens of the African race, and the supposed hostility to Union men, the generality of the language used extends the protection of its provisions to persons of every race and condition against discriminating and hostile State action of any kind. Its effect, in preserving free institutions and preventing harsh and oppresive State legislation, can hardly be overstated. When burdens are placed upon particular classes or individuals, whilst the majority of the people are exempted, little heed may be paid to the complaints of those affected. Oppression thus becomes possible and lasting. But a burdensome law, operating equally upon all, will soon create a movement for its repeal. With the amendment enforced, a bad or an oppressive State law will not long be left on any statute book."

As to private corporations being included under the designation of persons in the Fourteenth Amendment, the court, by Judge Field, said:

"Private corporations, and under this head, with the exception of sole corporations, with which we are not now dealing, all corporations other

when they came, as many did, from leaders of the assault, some of whom had lost, by decisions rendered, large contingent fees. The Judge pursued the even tenor of his

than those which are public are included—private corporations consist of an association of individuals united for some lawful purpose, and permitted to use a common name in their business, and have succession of membership without dissolution. As said by Chief Justice Marshall: 'The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men.' (Providence Bank *v.* Billings, 4 Pet. 514, 562.) In this State they are formed under general laws. By complying with certain prescribed forms any five persons may thus associate themselves. In that sense corporations are creatures of the State; they could not exist independently of the law, and the law may, of course, prescribe any conditions not prohibited by the Constitution of the United States, upon which they may be formed and continued. But the members do not, because of such association, lose their rights to protection, and equality of protection. They continue, notwithstanding, to possess the same right to life and liberty as before, and also to their property, except as they may have stipulated otherwise. . . . .

"Whatever affects the property of the corporation, that is, of all the members united by the common name, necessarily affects their interests. If all the members of the corporation die or withdraw from the association, the corporation is dead; it lives, and can live only, through its members. When they disappear the corporation disappears. Whatever confiscates or imposes burdens on its property, confiscates or imposes burdens on their property; otherwise nobody would be injured by the proceeding. Whatever advances the prosperity or wealth of the corporation, advances proportionately the prosperity and business of the corporators; otherwise no one would be benefited. It is impossible to conceive of a corporation suffering an injury or reaping a benefit except through its members. The legal entity, the metaphysical being that is called a corporation, cannot feel either. So, therefore, whenever a provision of the Constitution or of a law guarantees to persons protection in their property or affords to them the means for its protection, or prohibits injurious legislation affecting it, the benefits of the provision or law are extended to corporations, not to the name under which different persons are united, but to the individuals composing the union. The courts will always look through the name to see and protect those whom the name represents."

Since the above decision the Supreme Court has expressly held that a private corporation is included under the designation of person in the Fourteenth Amendment. (Santa Clara County *v.* Southern Pacific Railroad Company, 118 U. S. 396; Pembina Mining Co. *v.* Pennsylvania, 125 U. S. 181, 189.)

way, amidst the torrent of abuse, but he recognized that it was not the time for him to look for political support. He therefore positively declined to be a candidate for the Presidency. He wrote a letter to Mr. Johnson, at the time editor of the *Alta-California*, to that effect, which was published in that paper. It is given in a note below.*

He supposed, with its publication, his name would be left out of consideration, but it was not so destined. Some weeks after that letter was published a delegation of citizens from Missouri, headed by Mr. Mumford, the editor and proprietor of the Kansas City *Times*, called upon him at his residence in Washington, and stated that they wished to use his name as a candidate before the National Convention. The following is the account given by Mr. Mumford of the interview:

"I came to Washington, and, accompanied by other gentlemen, called on Judge Field to make known the object of our mission. In reply to the express wish to use his name as a candidate

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* WASHINGTON, D. C., *March* 20, 1884.

MY DEAR MR. JOHNSON:

Your letter of the 2d instant was received a few days since. For the kind words it contained, and the interest it manifested to advance my supposed political aspirations, I give you many thanks. But in truth I have not the aspirations you attribute to me. It is only out of deference to the wishes of friends that I have not long since put in print a declaration that my name cannot be used with my consent in any political contest. I have looked over the whole matter, and months ago, as I told you last summer, I came to the conclusion that it will serve no useful purpose to bring me out as a candidate for the Presidential nomination. I am not insensible to the honor of having a favorable delegation from California. I should feel proud of the support of the State, but there is no use in disguising the fact that owing to prejudices in certain quarters it will be difficult to obtain it. I shall certainly not deny my record to secure any one's support.

My judicial opinions on subjects of interest in California—the position of the Chinese in the State, the taxation of property of railways, and the Mexican land grants—have, I am aware, given offense to a large number of the people who would have had me disregard the law, the treaties with China and Mexico, and the Constitution, to carry out their views and schemes. I could not thus do violence to my convictions of duty—

for the Presidential nomination, Judge Field said: 'While I am not insensible to the high compliment paid to me by this expression of your preference and confidence, I must frankly say that I have long since ceased to entertain political aspirations, and have frequently so advised my nearest friends. Moreover, I do not consider myself an available candidate, in any sense, for the very substantial reason that the candidate for the Presidential nomination should be one who would receive the united support in the convention of the delegation from his own State, and this I could not reasonably expect to command. I confess it would be a source of gratification to me to be supported by the State of California, but it is a patent fact, which it would be useless to deny, that prejudices exist in certain quarters which I cannot hope to overcome without stultification of my official record.' When being asked to explain what particular official record he referred to, he stated the substance of what is contained in his letter to Mr. Johnson, given in the above note.

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the thing was impossible. Indeed, I would not have changed a line of what I wrote, had I known beforehand that for it I should lose the support of California, nor would I now change a line to secure the vote of every man in the State.

One of these days our good people will see their error, and then they will do me full justice. I am content to wait for their ultimate judgment of approval, which, sooner or later, will certainly come. They will then admit that a just judge could not ignore the law or treaties, or the Constitution, however offensive and detested the persons protected by them may have been. And as to railway taxation, all will then acknowledge that, under any just administration of government, associated capital cannot be assessed on different principles and taxed at different rates from individual capital. And as to the Mexican grants, it will not then be questioned that the grantees had a right to stand upon the plighted faith of the Government, under the treaty which gave us the magnificent domain of California, that they should be protected in all their rights of property. But enough of this. Sufficient it is to say that my strong inclination has long been, and still is, against being in the political contest of this year. I am content to remain where I am. There I may do some good, and, after all, position is only desirable as a means of doing good.

Please, therefore, at once say in the *Alta-California*, in some appropriate form, that I am not a candidate for any political position, and do not wish to be so considered by any one.

I am, very truly yours,

(Signed) STEPHEN J. FIELD.

Hon. JAMES A. JOHNSON.

"The delegation united in expressing to him the conviction that the support of California in the convention was immaterial, in view of the fact that his candidacy would be advanced from national, rather than from local, standpoints, and for the best interests of Democratic success. They thereupon pressed him to know whether, in the event of his nomination, he would accept the same. Judge Field reflected for a moment, and replied: 'Such a contingency is scarcely possible. I have made no effort to secure the nomination, and have discouraged all efforts on the part of my friends to that end. But there is no instance in the history of the country where the nomination of a National Convention actually tendered has been refused, and I have no idea that I should prove an exception.'"

Notwithstanding this interview, the gentlemen from Missouri and other friends of the Judge in California continued to make reference to him as a possible candidate, and to advocate his nomination.

That course only increased the bitterness of hostile partisans in California, and led to his denunciation in the State convention called to appoint delegates to the National Convention, a denunciation which did not disturb him in the least. In referring to it he simply remarked that far better and wiser men than himself had been reviled, persecuted, and driven from their country for causes which were afterwards repeated to their honor, and for which monuments were erected to their memory; and he was content to abide his time. But not so others. The most respectable persons of the community were indignant at the conduct of the convention.*

* The *Alta-California*, in its issue of June 15, 1884, said:

"The Democratic convention did some extraordinary things, but the most extraordinary of all was the passage of the resolution opposing the candidacy of Mr. Justice Field for the Presidency. Under any circumstances a resolution by a State convention, opposing the candidacy of a distinguished member of the party, would be out of place, and the first recorded case of the kind occurred at Stockton. But when we consider that the denunciation was directed against a citizen of our own State, a citizen who has done more for the State than any other, a citizen whose person and character are always mentioned with genuine affection by the best elements of California society, then it becomes a matter of profound-

In the summer of 1881, Judge Field went to Europe, and remained abroad several months, extending his journey to the East, and revisiting Athens and Smyrna,

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est astonishment that any body of men, with the slightest claims to decency, could have stumbled so far from the path of honorable political warfare. What were the causes that led up to the passage of this resolution will naturally be asked. It must be remembered that Democratic local politics are in confusion in this State, and that such has been the case since the great upheaval of the sand-lot. In the midst of that uprising against property and all the decencies of society, and just as that element had overthrown all political parties and shattered the Democracy to fragments, and whilst the slogan of the sand-lot, 'the Chinese must go,' was still ringing in the ears of the terrified people, it became the duty of Mr. Justice Field to sit in judgment upon the famous queue ordinance. He decided the ordinance to be unconstitutional, and also decided in another suit against Chinese laundrymen, brought for vexation and blackmail, that Chinamen must be governed by the general laws of the land, and that the business conducted by them must be governed by general laws, applicable to the class of business, and not by laws directed solely against them as a class. The decisions of Mr. Justice Field, striking down the wretched, abortive, and unconstitutional legislation of this State with reference to the Chinese, were received with openly expressed hostility and denunciation by the sand-lotters.

"Then came the New Constitution craze, during which all the dissatisfied elements of society united with the sand-lot in the construction and adoption of a constitution which violated every principle of political economy and acknowledged axiom of the science of government. Mr. Justice Field was compelled in the discharge of his duty to strike null certain provisions of this constitution which discriminated in the matter of taxation against railroad and other quasi-public corporations and subjected them to a mode and measure of assessment not applied to natural persons. Mr. Justice Field held that corporations were mere aggregations of natural persons and were as much entitled to the equal protection of the law as natural persons, and also held that the provisions in question violated the Fourteenth Amendment, in that they denied to corporations the equal protection of the laws. This decision aroused the hostility of the sand-lot and the supporters of the New Constitution. Finally the Workingmen's party and the New Constitution party became disintegrated and the members went back to their old affiliations, the majority drifting back to the Democratic party. . . . *And so the late convention was organized, its members noisy, tumultuous, violent and demagogical, and its action the exact reproduction of the scenes which used to occur in the old sand-lot and New Constitution parties.*"

The *Argonaut* in its issue of June 28, 1884, said:

"Nothing has occurred in the history of California which has caused

where he had spent several happy years of his boyhood half a century before.

When he was at Smyrna, in company with the consul, he called upon the Pasha. Fifty years before he had called upon the then Pasha in company with Commodore Porter. That officer had been appointed by President Jackson, in 1831, *chargé d'affairs* to the Sublime Porte. On his way to Constantinople he stopped at Smyrna, or sub-

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greater mortification and regret to its intelligent citizens than the conduct of the Democratic party, as indicated by its proceedings in the State convention toward Mr. Justice Stephen J. Field. This gentlemen's high standing is acknowledged in other lands and other States. His pre-eminent ability is recognized. He is justly eminent for his splendid talents. . . . He has filled with honor the highest judicial position in our State. He fills with honor his present position upon the Supreme Bench of the United States. He has impressed himself upon every page of our history. His work is seen in our legislative and judicial systems as a creation. He molded our land laws; he established our water code; he formulated our municipal governments; he is written all over that chapter in the history of California which enabled an American community to enter a conquered territory, to come into a land of strange language and civil law, to successfully establish an American State, and to successfully maintain itself in the presence of invading barbarism. Judge Field has displayed the fearlessness of his judicial courage in breasting the waves of popular violence, and in daring to hold in contempt the worthlessness of public clamor. In the test-oath cases he displayed an adherence to principles which reached the sublimity of judicial firmness and independence—decisions which, in the heated passions of the moment, turned upon him a torrent of unreserved abuse. This he has outlived and survived, receiving the grateful recognition of intelligent men North and South, and intelligent lawyers everywhere. In rebuking the absurd attempts of California demagogues to violate every rule of law and humanity in reference to the Chinese, he again demonstrated that in his loyalty to principle he was not to be turned aside. In the railroad cases, and all other cases which he has been called upon to determine, he has illustrated his fidelity to the laws. . . . . His respect for the law is so profound and his knowledge of it so intimate, that he could not violate its fundamental principles to subserve his personal advancement, if he would. These judicial decisions have brought upon him all the vile hatred of the meaner and more ignorant of that class of Democratic, Sand-lot, and New Constitution Democrats who have crawled to the surface of the Democratic party in this State. Democratic ignorance and malignity culminated at Stockton. The Democratic convention was the apothesis of everything which was base, and cowardly, and contemptible."

sequently visited it, and whilst there collected all the Americans he could, and called with them upon the Pasha. The Judge was then fourteen years of age, and he accompanied the others. A dragoman went with them, and as they entered the presence of the Pasha the dragoman kneeled and kissed the hem of his garment, and took a seat at his feet where he remained during the interview. The Pasha was dressed in the flowing robes of the Turkish costume, and wore a turban. He was seated on a divan, and as the party, which consisted of about twelve persons, entered the room, he beckoned them to be seated by his side. Chibouks and coffee were brought. One circumstance of the interview the Judge distinctly remembers in the conversation between the Pasha and the Commodore. The Pasha said to him: "I see that you are Commodore; where is the Admiral of your navy?" The Commodore, turning around, said, "Our Admirals are in the future," and pointed to Field, then, as before stated, a boy of fourteen years of age. Some years afterwards, when at Washington, the Judge related this story to the son of the great Commodore, who was himself an Admiral, and it seemed to please him very much. When the Judge called in 1881, with the American consul, upon the successor of this Pasha, he was asked if that was his first visit. He replied, "No, I was here *il y a cinquante ans*," that is, fifty years ago. The Pasha said, "*Cinque ans*," that is, five years ago. "No," he replied, "*un demi siècle*," that is, half a century ago. "You must, then, see," said the Pasha, "a great change now." "Nowhere so much," he replied, "as in this room." To quote his language: "When I came here fifty years ago I saw your predecessor in flowing robes, wearing a turban, sitting on a divan, and we only conversed with him through a dragoman. I see you in European dress, wearing a fez, and I carry on conversation with you in French. I see, instead of a divan, chairs and sofas; instead of the chibouk I am offered a cigarette, and I look out of the window, and in-

stead of the slow-moving camel I notice a tramway—a greater change I could hardly expect to see." A very pleasant interview the Judge and the consul had with the Pasha, and as he left, the Pasha offered him an escort if he wished to visit any of the surroundings of the city, or to go to Ephesus, there being, at the time, rumors of brigands in the neighborhood.

When the Judge visited Athens he found Rev. and Mrs. Hill still alive, Mr. Hill being over ninety and Mrs. Hill not far from eighty years of age. When a boy the Judge had escorted Mrs. Hill in a Greek vessel from Smyrna to Athens, leaving Smyrna about the 20th of December, 1831, and arriving at Athens the first of January, 1832. He passed the following winter with her and attended a Greek school. Mr. and Mrs. Hill soon afterwards established at Athens a school for young ladies, which became a very successful and useful seminary of learning. The Judge found that great respect was entertained for them by the Greek Government and people generally. The daughters of the most distinguished families of Greece received their education there. Mrs. Hill said to the Judge that he was the only admirer of hers in her youth, who had come back to see her after the lapse of half a century. He spent a few days, with great pleasure there, passing a great deal of time in conversation with his old and dear friends.

Whilst in Athens he also visited Dr. Schliemann and listened to his enthusiastic accounts of his explorations of ancient Troy. He wandered among the ruins of Athens, stood on Mars Hill and read the address of St. Paul, and felt fully the force of his language, as when the Apostle, looking on one side, saw the Acropolis and the magnificent Parthenon, and the statue of Minerva, and before him the temple of Theseus, said: "God that made the world and all things therein, seeing that He is Lord of heaven and earth, dwelleth not in temples made with hands." (Acts, 17, 24.) All the recollections of his early years came back with great force.

On his return in the fall from his trip he resumed his regular judicial duties with additional vigor and pleasure.

His course on the bench has been one of simple dignity. No disturbances or unmanly disputes have occurred during his long career. Only in two instances has he been called upon to impose any punishment for disorderly or contemptuous proceedings in court. One was in the case of a Frenchman by the name of Moulin, who became denunciatory and offensive in his remarks to the judges in open court; and the other was upon Judge Terry and his wife, the one having personally insulted the Judge with gross imputations upon him, and the other having been guilty of violent proceedings in court. The circumstances of this latter case require further notice as showing not only the contempt committed by them, but also the subsequent attempted assassination of the Judge and the proceedings following it. I take, from the opinion of Judge Sawyer, in the case of the Petition of David Neagle, a statement of the facts:

"On the 3d of September, 1888, certain cases were pending in the Circuit Court of the United States for the Northern District of California, between Frederick W. Sharon, as executor, *vs.* David S. Terry and Sarah Althea Terry, his wife, and between Francis G. Newlands, as trustee, and others against the same parties, on demurrers to bills to revive and carry into execution the final decree of the court in the suit of William Sharon *vs.* Sarah Althea Hill, and were decided on that day. That suit was brought to have an alleged marriage contract between the parties adjudged to be a forgery, and obtain its surrender and cancellation. The decree rendered adjudged the alleged marriage contract to be a forgery, and ordered it to be surrendered and canceled. The decree was rendered after the death of William Sharon, and was therefore entered as of the day when the case was submitted to the court. By reason of the death of Sharon it was necessary, in order to execute the decree, that the suit should be revived. Two bills were filed, one by the executor of the estate of Sharon, and the other a bill of revivor and supplemental by Newlands as trustee for that purpose.

"In deciding the cases, the court gave an elaborate opinion upon the questions involved, and whilst it was being read certain disorderly proceedings took place for which the defendants, David S. Terry and his wife, were adjudged guilty of contempt and ordered to be imprisoned. The following is an accurate statement of those proceedings, slightly condensed from the opinion of the court delivered on the subsequent application of David S. Terry to have the order of commitment revoked. For the whole proceeding, see In re Terry, 36 Fed. Rep. 419.

"Shortly before the court opened, the defendants came into the court-room and took their seats within the bar at the table next to the clerk's desk, and almost immediately in front of the Judges, the defendant, David S. Terry, being at the time armed with a bowie-knife concealed on his person, and the defendant, Sarah Althea, his wife, carrying in her hand a small satchel which contained a revolver of six chambers, five of which were loaded. The court at the time was held by the Justice of the Supreme Court of the United States allotted to this circuit, who was presiding; the United States Circuit Judge of this circuit; and the United States District Judge of Nevada, called to this district to assist in holding the Circuit Court. Almost immediately after the opening of the court, the Presiding Justice commenced reading its opinion in the cases mentioned, but had not read more than one-fourth of it when the defendant, Sarah Althea Terry, arose from her seat and asked him, in an excited manner, whether he was going to order her to give up the marriage contract to be canceled.

"The Presiding Justice replied, 'Be seated, madam.' She repeated the question, and was again told to be seated. She then cried out, in a violent manner, that the Justice had been bought, and wanted to know the price he held himself at; that he had got Newlands' money for his decision, and everybody knew it, or words to that effect. It is impossible to give her exact language. The Judges and parties present differed as to the precise words used, but all concurred as to their being of an exceedingly vituperative and insulting character.

"The Presiding Justice then directed the Marshal to remove her from the court-room. She immediately exclaimed that she would not go from the room, and that no one could take her from it, or words to that effect. The Marshal thereupon proceeded to-

wards her to carry out the order for her removal and compel her to leave, when the defendant, David S. Terry, rose from his seat, evidently under great excitement, exclaiming, among other things, 'No living man shall touch my wife!' or words of that import, and dealt the Marshal a violent blow in his face.* He then unbuttoned his coat and thrust his hand under his vest, where his bowie-knife was kept, apparently for the purpose of drawing it, when he was seized by persons present, his hands held from drawing his weapon, and he himself forced down on his back. The Marshal then removed Mrs. Terry from the court-room. Soon afterward Mr. Terry was allowed to rise, and was accompanied by officers to the door leading to the corridor on which was the Marshal's office. As he was about leaving the room, or immediately after stepping out of it, he succeeded in drawing his knife, when his arms were seized by a Deputy Marshal and others present, to prevent him from using it, and they were able to take it from him only after a violent struggle.

"The petitioner Neagle wrenched the knife from his hand, whilst four other persons held on to the arms and body of Terry, one of whom presented a pistol to his head, threatening at the same time to shoot him if he did not give up the knife. To these threats Terry paid no attention, but held on to the knife, actually passing it during the struggle from one hand to another.

"Mr. Cross, a prominent attorney, who on that occasion sat next to Mrs. Terry, a little to her left and rear, testifies that just before she arose to interrupt Justice Field she nervously worked at the clasp of a small satchel about nine inches long, and tried to open it; and not succeeding, in consequence of her excitement, she hastily sprang to her feet and interrupted the Justice as hereinbefore stated. Knowing that she had before drawn a pistol from a similar satchel in the Master's room, he concluded at this time that she was trying to get her pistol out, and he consequently held himself in readiness to seize her arm as soon as it should appear, and endeavor to prevent its use until he could get assistance, his right arm being partially disabled. (See Sharon *v.* Hill, 11 Sawyer, 123.) At this time Mrs. Terry sat directly in front of Justice Field and the Circuit Judge, less than four yards from either. A loaded revolver was afterwards taken from this satchel

* One of the witnesses stated that Terry also said, "Get a written order from the court."

by the Marshal. For their conduct and resistance to the execution of the order of the Court, the defendants, Sarah Althea Terry and David S. Terry, were adjudged guilty of contempt and ordered to be imprisoned, the former for thirty days and the latter for six months.

"In consequence of the imprisonment which followed, various threats of personal violence to Justice Field and the Circuit Judge were made by Terry and his wife. Those threats were that they would take the lives of both Judges; those against Justice Field were sometimes that they would take his life directly, at other times that they would subject him to great personal indignities and humiliations, and if he resented it they would kill him.

"These threats were not made in ambiguous terms, but openly and repeatedly, not to one person, but to many persons, until they became the subject of conversation throughout the State and of notice in the public journals. Reports of these threats through the press and through the reports of the United States Marshal and United States Attorney reached Washington, and in consequence of them the Attorney-General thought proper to give instructions to the Marshal of the United States for the Northern District of California to take measures to protect the persons of those judges from violence at the hands of Terry and his wife. On the return of Justice Field from Washington to attend his circuit in June last, [1889] the probability of an attack by Judge Terry upon him was the subject of conversation throughout the State, and of notices in some of the journals in the city of San Francisco. It was the general expectation that if Judge Terry met Justice Field violence would be attempted upon the latter.

"In consequence of this general belief and expectation, and the fact that the Attorney-General of the United States had given instructions to the Marshal to see that the persons of Justice Field and of the Circuit Judge should be protected from violence, the Marshal of the Northern District appointed the petitioner in this case, David Neagle, to accompany Mr. Justice Field whilst engaged in the performance of his duties and whilst passing from one district to another within his circuit, so as to guard him against the threatened attacks. He was specially commissioned as a deputy by Mr. Franks, whose instructions to him were that he should protect Justice Field at all hazards, and, knowing the

violent and desperate character of Terry, that he should be active and alert, and be fully prepared for any emergency, but not to be rash; and in case any violence was attempted from any one, to call upon the assailant to stop, and to inform him that he was an officer of the United States.

"Judge Terry was a man of great size and strength, who had the reputation of being always armed with a bowie-knife, in the use of which he was specially skilled, and of showing great readiness to draw and use it upon persons towards whom he entertained any enmity or had any grievance, real or fancied.

"On the 8th of August, 1889, Justice Field left San Francisco for Los Angeles in order to hear a *habeas corpus* case which was returnable before him at that city on the 10th of August, and also to be present at the opening of the court on the 12th. He was accompanied by Deputy Marshal Neagle, the petitioner. Justice Field heard the *habeas corpus* case on the 10th of August. On the 12th of August he opened the Circuit Court, Judge Ross sitting with him, and he delivered on the latter day an opinion in an important land case, and also an opinion in the *habeas corpus* case. On the following day the court heard an application for an injunction in an important water case from San Diego County. No other cases being ready for hearing before the Circuit Court, he took the train on Tuesday, the 13th, at 1.30 o'clock in the afternoon, for San Francisco, where he was expected to hear a case then awaiting his arrival, being accompanied on his return by Deputy Marshal Neagle. On the morning of the 14th, between the hours of seven and eight, the train arrived at Lathrop, in San Joaquin County, which is in the Northern District of California, a station at which the train stopped for breakfast. Justice Field and the Deputy Marshal at once entered the dining-room there to take their breakfast, and took their seats at the third table in the middle row of tables. Justice Field seated himself at the extreme end, on the side looking toward the door. The Deputy Marshal took the next seat on the left of the Justice. What subsequently occurred is thus stated in the testimony of Justice Field:

"A few minutes afterwards Judge Terry and his wife came in. When Mrs. Terry saw me, which she did directly she got diagonally opposite me, she wheeled around suddenly and went out in great haste. I afterwards understood that she went for her satchel.

Judge Terry walked past, opposite to me, and took his seat at the second table below. The only remark I made to Mr. Neagle was, 'There is Judge Terry and his wife.' He remarked, 'I see him.' Not another word was said. I commenced eating my breakfast. I saw Judge Terry take his seat. In a moment or two afterwards I looked round and saw Judge Terry rise from his seat. I supposed at the time he was going out to meet his wife, as she had not returned, so I went on with my breakfast. It seems, however, that he came round back of me—I did not see him—and struck me a violent blow in the face, followed instantaneously by another blow. Coming so immediately together, the two blows seemed like one assault. I heard 'Stop! stop!' cried by Neagle. Of course I was for a moment dazed by the blows. I turned my head round and saw that great form of Terry, with his arm raised and his fists clenched to strike me. I felt that a terrific blow was coming, and his arm was descending in a curved way, as though to strike the side of my temple, when I heard Neagle cry out, 'Stop! stop! I am an officer!' Instantly two shots followed. I can only explain the second shot from the fact that he did not fall instantly. I did not get up from my seat, although it is proper for me to say that a friend of mine thinks that I did; but I did not. I looked around and saw Terry on the floor. I looked at him and saw that peculiar movement of the eyes that indicates the presence of death. Of course it was a great shock to me. It is impossible for any one to see a man in the full vigor of life, with all those faculties that constitute life, instantly extinguished, without being affected, and I was. I looked at him for a moment, then rose from my seat, went around and looked at him again, and passed on. Great excitement followed. A gentleman came to me whom I did not know, but I think it was Mr. Lidgerwood, who has been examined as a witness in this case, and said: 'What is this?' I said: 'I am a Justice of the Supreme Court of the United States. My name is Judge Field. Judge Terry threatened my life and attacked me, and the Deputy Marshal has shot him.' The Deputy Marshal was perfectly cool and collected, and stated: 'I am a Deputy Marshal, and I have shot him to protect the life of Judge Field.' I cannot give you the exact words, but I give them to you as near as I can remember them. A few moments afterwards the Deputy Marshal said to me: 'Judge, I think you had better go to the car.' I said, 'Very well.' Then this gentleman, Mr.

Lidgerwoed, said: "I think you had better.' And with the two I went to the car. I asked Mr. Lidgerwood to go back and get my hat and cane, which he did. The Marshal went with me, remained some time, and then left his seat in the car, and, as I thought, went back to the dining-room. (This is, however, I am told, a mistake, and that he only went to the end of the car.) He returned, and either he or some one else stated that there was great excitement; that Mrs. Terry was calling for some violent proceedings. I must say here that, dreadful as it is to take life, it was only a question of seconds whether my life or Judge Terry's life should be taken. I am firmly convinced that had the Marshal delayed two seconds both he and myself would have been the victims of Terry."

"In answer to a question whether he had a pistol or other weapon on the occasion of the homicide, Justice Field replied: 'No, sir. I have never had on my person or used a weapon since I went on the bench of the Supreme Court of the State, on October 13, 1857, except once. That was on an occasion when I crossed the Sierra Nevada Mountains in 1862. With that exception, I have not had on my person or used a pistol or other deadly weapon.'

"Mr. Neagle in his testimony stated that before the train arrived at Fresno, he got up and went out on the platform, leaving the train, and there saw Judge Terry and his wife get on the cars; that when the train arrived at Merced he spoke to the conductor, Woodward, and informed him that he was a Deputy United States Marshal; that Judge Field was on the train, and also Judge Terry and his wife, and that he was apprehensive that when the train arrived at Lathrop there would be trouble between those parties, and inquired whether there was any officer at that station, and was informed in reply that there was a constable there; that he then requested the conductor to send word to the officer to be at Lathrop on the arrival of the train, and that he also applied to other parties to induce them to endeavor to secure assistance for him at that place in case it should be needed. The Deputy Marshal further stated that when the train arrived at Lathrop, Justice Field went into the dining-room, he accompanying the Justice; that they took seats at a table; that shortly after they were seated, Judge Terry and his wife entered the dining-room, his wife following him several feet in the rear; that when

the wife reached a point nearly opposite Justice Field, she turned around and went out rapidly from the room, and, as appeared from what afterward followed, she went to the car to get her satchel. When she returned from the car, the satchel was taken from her, and it was found to contain a pistol—revolver—containing six chambers, all of which were loaded with ball. This pistol lay on the top of the other articles in the satchel. The witness further stated that Judge Terry passed down opposite Justice Field, to a table below where they were sitting; that in a few minutes, whilst Justice Field was eating, Judge Terry rose from his seat, went around behind him—the Justice not seeing him at the time—and struck him two blows, one on the side and the other on the back of the head; that the second blow followed the other immediately; that one was given with the right hand and the other with the left; that Judge Terry then drew back his hand, with his fist clenched, apparently to give the Justice a violent blow on the side of his head, when he, Neagle, sprang to his feet, calling out to Terry, 'Stop! stop! I am an officer!' that Terry bore at the time on his face an expression of intense hate and passion, the most malignant the witness had ever seen in his life, and that he had seen a great many men in his time in such situations, and that the expression meant life or death for one or the other; that as he cried out those words, 'Stop! stop! I am an officer!' he jumped between Terry and Justice Field, and at that moment Judge Terry appeared to recognize him, and instantly, with a growl, moved his right hand to his left breast, to the position where he usually carried his bowie-knife; that, as his hand got there, the Deputy Marshal raised his pistol and shot twice in rapid succession, killing him almost instantly. He further stated that the position of Judge Field was such—his legs being at the time under the table, and he sitting—that it would have been impossible for him to have done anything even if had been armed, and that Judge Terry had a very furious expression, which was characterized by the witness as that of an infuriated giant. He also added that his cry to him to stop was so loud that it could be heard throughout the whole room, and that he believed that a delay in shooting of two seconds would have been fatal both to himself and Justice Field.

"The facts thus stated in the testimony of Justice Field and the petitioner were corroborated by the testimony of all the wit-

nesses to the transaction. The petitioner soon afterwards accompanied Justice Field to the car, and whilst in the car he was arrested by a constable, and at the station below Lathrop was taken by that officer from the car to Stockton, the county seat of San Joaquin County, where he was lodged in the county jail. Mr. Justice Field was obliged to continue on to San Francisco without the protection of any officer. On the evening of that day Mrs. Terry, who did not see the transaction, but was at the time outside of the dining-room, made an affidavit that the killing of Judge Terry was murder, and charged Justice Field and Deputy Marshal Neagle with the commission of the crime. Upon this affidavit, a warrant was issued by a Justice of the Peace at Stockton against Neagle and also against Justice Field. Subsequently, after the arrest of Justice Field, and after his being released by the United States Circuit Court on *habeas corpus* upon his own recognizance, the proceeding against him before the Justice of the Peace was dismissed, the Governor of the State having written a letter to the Attorney-General of the State, declaring that the proceeding, if persisted in, would be a burning disgrace to the State, and the Attorney-General having advised the District Attorney of San Joaquin County to dismiss it. There was no other testimony whatever before the Justice of the Peace except the affidavit of Sarah Althea Terry upon which the warrant was issued.

"In the suit of William Sharon against Mrs. Terry in the Circuit Court of the United States, it was adjudged that the alleged marriage contract between her and Sharon, produced by her, was a forgery, and it was held that she had attempted to support it by perjury and subornation of perjury. She had also made threats during the past year, and up to the time of the shooting of Judge Terry, that she would kill the Circuit Judge and Justice Field, and she repeated that threat up to the time she made her affidavit for the arrest of Justice Field and Neagle; and that she had made such threats was a notorious fact in Stockton and throughout the State.

"A petition was accordingly presented, on behalf of Neagle, to the Circuit Court of the United States for a writ of *habeas corpus* in this case, alleging, among other things, that he was arrested and confined in prison for an act done by him in the performance of his duty, namely, the protection of Mr. Justice Field, and taken

away from the further protection which he was ordered to give to him. The writ was issued, and upon its return the Sheriff of San Joaquin County produced a copy of the warrant issued by the Justice of the Peace of that county, and of the affidavit of Sarah Althea Terry upon which it was issued. A traverse to that return was then filed in this case, presenting various grounds why the petitioner should not be held, the most important of which were, that an officer of the United States, specially charged with a particular duty, that of protecting one of the Justices of the Supreme Court of the United States whilst engaged in the performance of his duty, could not, for an act constituting the very performance of that duty, be taken from the further discharge of his duty and imprisoned by the State authorities, and that when an officer of the United States in the discharge of his duties is charged with an offense consisting in the performance of those duties, and is sought to be arrested, and taken from the further performance of them, he can be brought before the tribunals of the nation of which he is an officer, and the fact then inquired into. The Attorney-General of the State appeared with the District Attorney of San Joaquin County, and contended that the offense of which the petitioner is charged could only be inquired into before the tribunals of the State.

"The question of the jurisdiction of the national tribunal to interfere in the matter was elaborately argued by counsel, the Attorney-General of the State and Mr. Langhorne appearing with the District Attorney of San Joaquin County on behalf of the State, and Mr. Carey, United States Attorney, and Messrs. Herrin, Mesick, and Wilson appearing on behalf of the petitioner. The latter did not pretend that any person in this State, high or low, who committed a crime, might not be tried by the local authorities if it were a crime against the State, but that when in the performance of his duties that alleged crime consisted in an act which is deemed a part of the performance of a duty devolved upon him by the laws of the United States, it was within the competency of the national tribunals to determine in the first instance whether that act was a duty devolving upon him, and if it was a duty devolving upon him, the officer had committed no offense against the State, and was entitled to be discharged."

The court held that it was within the competency of the President and the heads of the executive depart-

ments representing him to direct that proceedings be taken for the protection of officers of the Government whilst in the discharge of their duties; that it was especially appropriate that such protection should be given to Justices of the Supreme Court of the United States whilst engaged in their respective circuits in the performance of their duties and in proceeding to and from them for that purpose; that the Attorney-General, representing the President, was fully justified in giving orders to the Marshal of the California District to appoint a deputy to look especially to the protection of Justices Field and Sawyer from violence threatened by Terry and his wife; and that the Deputy Marshal, acting under instructions for their protection, was justified in any measures that were necessary for that purpose, even to taking the life of the assailant. It also held that the courts of the United States had jurisdiction to protect an officer of the United States from arrest by State authorities for the performance of any act imposed upon him by the Constitution and laws of the United States. It therefore discharged Neagle from arrest.

The case and all the proceedings leading to it; the attempted assassination of Judge Field by Terry; the shooting of the latter by the Deputy Marshal assigned for the protection of Judge Field, excited widespread interest throughout the United States, and was the subject of discussion in all the leading periodicals of the country. With rare exceptions the conduct of the officers of the Government in giving him protection, and the action of the Deputy Marshal in shooting down his assailant, were fully justified. There were some, not many, who insisted, in their extreme devotion to States' rights, that the States were to determine whether the Deputy Marshal in protecting Judge Field was justified in what he did. In other words, they insisted that whether an officer of the United States could be protected in the discharge of his duties, and the extent of that protection, were not to be deter-

mined by the tribunals of the sovereignty under which he acted, but by the tribunals and officers of another sovereignty.

From the judgment discharging Neagle an appeal was taken to the Supreme Court of the United States, and by it that judgment was affirmed. The doctrine declared in these decisions was of a most important character, for weak, indeed, would be that government whose officers could not be protected by its tribunals, but who would have to seek that protection in another and different sovereignty.

While the leading periodicals throughout the country spoke approvingly of the action of the Government, they commended in strong terms the conduct and bearing of Judge Field during the trying proceedings. A citation from one or two of these periodicals will be sufficient to indicate the general spirit of all.

The New Orleans Times-Democrat, in one of its issues at this period, used the following language:

"If Judge Field of the Supreme Court, one of the nine highest judges under our republican government, in traveling recently over his circuit in California, had been left at the mercy of the violent man who had repeatedly threatened his life, who had proved himself ready with the deadly knife or revolver, it would have been a disgrace to American civilization; it would have been a stigma and stain upon American manhood; it would have shown that the spirit of American liberty, which exalts and pays reverence to our judiciary, had been replaced by a public apathy that marked the beginning of the decline of patriotism. Judge Field recognized this when, on being advised to arm himself in case his life was endangered, he uttered the noble words: 'No, sir; I do not and will not carry arms, for when it is known that the judges of the courts are compelled to arm themselves against assaults offered in consequence of their judicial action it will be time to dissolve the courts, consider the government a failure, and let society lapse into barbarism.' That ringing sentence has gone to the remotest corner of the land, and everywhere it has gone it should fire the American heart with a proud resolve to protect forever the sanctity of our judiciary."

The New York Herald, in its issue of August 19, 1889, said:

"The sensation of the past week is a lesson in republicanism and a eulogium on the majesty of the law.

"It was not a personal controversy between Stephen J. Field and David S. Terry. It was a conflict between law and lawlessness—between a judicial officer who represented the law and a man who sought to take it into his own hands. One embodied the peaceful power of the nation, the will of the people; the other defied that power and appealed to the dagger. . . . .

"Justice Field's whole course shows a conception of judicial duty that lends grandeur to a republican judiciary. It is an inspiring example to the citizens and especially to the judges of the country. He was reminded of the danger of returning to California while Judge Terry and his wife were at large. His firm answer was that it was his duty to go and he would go. He was then advised to arm himself for self-defense. His reply embodies a nobility that should make it historic: 'When it comes to such a pass in this country that judges of the courts find it necessary to go armed it will be time to close the courts themselves.'

"This sentiment was not born of any insensibility to danger, Justice Field fully realized the peril himself. But above all feeling of personal concern arose a lofty sense of the duty imposed upon a justice of the nation's highest court. The officer is a representative of the law—a minister of peace. He should show by his example that the law is supreme; that all must bow to its authority; that all lawlessness must yield to it. When judges who represent the law resort to violence even in self-defense, the pistol instead of the court becomes the arbiter of controversies and the authority of the government gives way to the power of the mob.

"Rather than set a precedent that might tend to such a result, that would shake popular confidence in the judiciary, that would lend any encouragement to violence, a judge, as Justice Field evidently felt, may well risk his own life for the welfare of the commonwealth. He did not even favor the proposition that a marshal be detailed to guard him.

"The course of the venerable Justice is an example to all who would have the law respected. It is also a lesson to all who would take the law into their own hands.

"Not less exemplary was his recognition of the supremacy of the law when the Sheriff of San Joaquin appeared before him with a warrant of arrest on the grave charge of murder. The warrant was an outrage, but it was the duty of the officer to serve it, even on a Justice of the United States Supreme Court. When the Sheriff hesitated and began to apologize before discharging his painful duty, Justice Field promptly spoke out: 'Officer, proceed with your duty. I am ready, and an officer should always do his duty.' These are traits of judicial heroism worthy the admiration of the world."

The *Argonaut*, a leading paper of San Francisco, not a political, but a literary paper, and edited with great ability, in its issue of August 26, 1889, used the following language:

"The course of Judge Field throughout this troublesome business has been in the highest degree creditable to him. He has acted with dignity and courage, and his conduct has been characterized by most excellent taste. His answer, when requested to go armed against the assault of Terry, is worthy of preservation. . . . . And now that his assailant has been arrested in his career by death, all honest men who respect the law will breathe more freely. Judge Terry had gained a most questionable reputation, not for courage in the right direction; not for generosity which overlooked, or forgave, or forget offenses against himself or his interests. He never conceded the right to any man to hold an opinion in opposition to his prejudices, or cross the path of his passion with impunity. He could with vulgar whisper insult the judge who rendered an opinion adverse to his client, and with profane language insult the attorney who had the misfortune to be retained by a man whose cause he did not champion. He had become a terror to society and a walking menace to the social circle in which he revolved. His death was a necessity, and, except here and there a friend of blunted moral instincts, there will be found but few to mourn his death, or criticise the manner of his taking off. To say that Marshal Neagle should have acted in any other manner than he did means that he was to have left Justice Field in the claws of a tiger, and at the mercy of an infuriated, angry monster, who had never shown mercy or generosity to an enemy in his power. . . . .

"Judge Field has survived the unhappy conflict which carried Judge Terry to his grave. He is more highly honored now than when this quarrel was thrust upon him; he has lost no friends; he has made thousands of new ones, who honor him for protecting with his life the honor of the American bench, the dignity of the American law, and the credit of the American name. In the home where Judge Terry lived he went to the grave almost unattended by the friends of his social surroundings, no clergyman consenting to read the service at his burial. The Supreme Court over which he had presided as Chief Justice refused to adjourn in honor of his death, the press and public opinion, for a wonder, in accord over the manner of his taking off."

Indeed, the public opinion of the country, as shown by the press and declarations of prominent individuals, was substantially one in its approval of the action of the Government, the conduct of Neagle, and the bearing of Justice Field.

At the time of the conquest of California by the forces of the United States, on the 7th of July, 1846, there was a Mexican pueblo at the site of the present city of San Francisco. The term "pueblo" means people, or population, but is used very much in the sense of the English word "town." It is sometimes applied to a collection of individuals residing in a particular place; to settlements or villages as well as to a regularly organized municipality. The pueblo of San Francisco was a small settlement, but of sufficient importance, as early as 1835, to have an *ayuntamiento* composed of alcaldes and other officers, and had continued under their government for several years. At the time of the conquest, and for some time afterwards, it was under the government of justices of the peace or alcaldes. By the general law of Mexico, which was in force at that time, pueblos or towns when once recognized by public authority became entitled, for their benefit, and for the benefit of their inhabitants, to the use of the land embracing the site of the pueblos or towns, and adjoining territory, within the limits of four square leagues, which were to be measured by the officer of the

government. Under these laws the pueblo of San Francisco asserted a claim to four square leagues to be measured off from the northern portion of the peninsula upon which the present city is situated. When San Francisco was occupied by our forces citizens of the United States were appointed by the military and naval commanders to act as alcades in place of the Mexican officers. These alcades were called upon by emigrants in great numbers for building lots, and grants to them were made almost as fast as requested. Many emigrants arriving subsequently denied the authority of the Mexican officers to make grants of lands, and claiming that the land within the pueblo was public property, they settled upon it wherever they found it unoccupied. In April, 1850, after the organization of the State government, San Francisco was incorporated as a city by the Legislature. She at once made claim to the lands of the pueblo as its successor, and when Congress had established a Board of Land Commissioners to settle private land claims, she presented her claim for confirmation to the board. In December, 1854, the board confirmed the claim for a portion of the four square leagues. Not satisfied with the limitation of her claim, the city appealed from the decree of the commissioners to the District Court of the United States. The Government also appealed, but subsequently withdrew its appeal. The case remained in the District Court of the United States undetermined until September, 1864, a period of nearly ten years, when under the authority of an act of Congress that court transferred the case to the Circuit Court of the United States, where it was decided in the following October. The decree was afterwards somewhat modified, and as finally settled was entered May 18, 1865, confirming the claim of the city to a tract of land embracing so much of the upper portion of the peninsula upon which the city is situated above the ordinary high-water mark of 1846 as would contain an area of four square leagues, the tract being bounded

on the north and east by the Bay of San Francisco, on the west by the Pacific Ocean, on the south by a due east and west line drawn so as to include the area designated, subject to certain deductions which are unnecessary to mention. This statement is taken from the decision of the Supreme Court of the United States in Trenouth *v.* San Francisco, (100 U. S. Reports, p. 251.) The land when confirmed was to be held in trust for the benefit of lot holders, under grants from the pueblo, town, or city, or other competent authority, and as to any residue in trust for the use and benefit of the inhabitants of the city. In April, 1851, the old charter of the city was repealed, and a new charter granted. The limits of the new charter covered two miles square. Pending the appeal of the pueblo claim in the District Court, the city passed an ordinance known in its history as the Van Ness Ordinance, the object of which was to quiet the title of persons owning land in the city. It relinquished all right and claim of the city to lands within the corporate limits as defined by the charter of 1851, with certain exceptions, to parties in actual possession thereof. There thus arose some conflict between parties who claimed under the pueblo title and those who claimed under the grant of the city by the Van Ness ordinance.

In October following, 1865, the Judge proceeded as usual to Washington to attend the then approaching term of the Supreme Court of the United States, and thought no more of the decision in the Pueblo case until his attention was drawn to it by a most extraordinary circumstance. Just before leaving San Francisco Mr. Rulofson, a photographer of note, requested the Judge to sit for a photograph, expressing a desire to add it to his gallery. The Judge consented, and a photograph of a large size was taken. As he was leaving the rooms of the photographer the latter observed that he intended to make some pictures of a small size from it, and would send the Judge a few copies. On the morning of the 13th of Jan-

uary following, 1866, at Washington, Delos Lake, a lawyer of distinction in California, at one time a District Judge of the State and then District Attorney of the United States, joined the Judge, informing him as he did so that the California steamer had arrived at New York, and that he hoped the Judge had received some letters for him, as he had directed his letters to be forwarded to the Judge's care. The Judge replied that when he left his room his messenger had not brought his mail, but if Mr. Lake would accompany him he would probably find it there. Accordingly the two proceeded to the Judge's room, where, on the center table, lay the Judge's mail, consisting of a large number of letters and papers. Among them the Judge noticed a small package, about an inch and a half thick, three inches in breadth, and three and one-half inches in length. It was addressed as follows, the words being printed:

Per Steamer.

(Three postage stamps.)

HON. STEPHEN J. FIELD,
Washington, D. C.

It bore the stamp of the San Francisco post office upon the address. The Judge's name had evidently been cut from the California Reports, but the words "Washington, D. C.," and "Per Steamer" had been taken from a newspaper. The slips were pasted on the package. On the opposite side were the words in print:

FROM
GEO. H. JOHNSON'S
PIONEER GALLERY,
645 and 649 Clay Street,
San Francisco.

As the Judge took up the package he remarked that this must come from Mr. Rulofson. "No," he immedi-

ately added; "Rulofson has nothing to do with the Pioneer Gallery." It then occurred to him it might be a present for his wife, recollecting that the mail came by the steamer which sailed from San Francisco about Christmas time. "It may be," he said, "a Christmas present for my wife. I will open it just far enough to see, and it be intended for her I will close it and forward it to New York," where she was at the time. He accordingly tore off the covering, and raised the lid just far enough to enable him to look inside. He was at once struck with the black appearance of the inside. "What is this, Lake?" he said, addressing himself to his friend. Judge Lake looked over Judge Field's shoulder into the box as he held it in his hand, and at once exclaimed, "It is a torpedo! Don't open it." The Judge was startled by the suggestion, as the idea of a torpedo was the last thing in the world to occur to him. He immediately laid the package on the sill of the window, where it was subjected to a careful inspection by them both, so far as it could be with the lid only one-eighth of an inch open. Soon afterward Judge Lake took the package to the Capitol, which was directly opposite the Judge's room, and to the office of the clerk of the Supreme Court, and showed it to Mr. Broom, one of the deputies. They dipped the package in water, and left it to soak for some minutes. They then took it into the carriageway leading to the Senate chamber, and, shielding themselves behind one of the columns, threw the box against the wall. The blow broke the hinge off the lid and exposed the contents. A murderous contrivance it was! A real infernal machine! Twelve cartridges, such as are used in a common pistol, about an inch in length, lay imbedded in a paste of some kind, covered with fulminating powder, and was connected with a bunch of friction matches, a strip of sand-paper, and a piece of linen attached to the lid, so that on opening the box the matches would be ignited and the whole explode. The package was sent to the War Department, and a report was returned by

the officers who examined it, with a detailed statement of the machine. Between the outside covering and the box there were two or three folds of tissue paper, placed there to prevent the possibility of an explosion from the stamping at the post office, or the striking against other packages during the voyage from San Francisco to New York. On the inside of the lid was pasted a slip cut from a San Francisco paper, dated October 31, 1864, stating that on the day previous the Judge had decided the case of the city against the United States, involving its claim to four square leagues of land, and giving the opening lines of his opinion. The Secretary of War, Mr. Stanton, immediately telegraphed in cipher to General Halleck, then in command at San Francisco, to find out if possible the person who made and sent the infernal machine. General Halleck put the detectives of his department on the search. Others employed the detectives of the San Francisco police, but all in vain. Suspicions were excited as to the complicity of different parties, but they were never sustained by sufficient evidence to justify the arrest of any one. The instrument, after remaining in the hands of the detectives of San Francisco for nearly two years, was returned to the Judge, and is now in his possession. In speaking of this occurrence the Judge says it has often been a matter of wonder to him how it was that some good angel whispered to him not to open the box. His impetuous temperament would naturally have led him to tear it open without delay. Probably such hesitation in opening a package addressed to him never before occurred, and probably never will again. "Who knows," he says, "but a mother's prayer for the protection of her son, breathed years before, was answered then? Who can say that her spirit was not then hovering over him, and whispering caution in his ears?"

This is the only case, except that of the Sharon and Terry matter, spoken of in another portion of this sketch, where violence was attempted against the Judge for a

decision he rendered. In consequence of the sudden rise of real property in California by reason of the immense emigration to that State, the development of its mineral wealth, and the discovery of the extraordinary fertility of its soil, the litigation in a multitude of cases involved great values. Parties by decisions rendered with reference to mines, and also with reference to land titles to property upon which large and valuable buildings had been erected and even cities had grown, were made rich or poor in a day. Some who in the morning deemed themselves rich, found when the decision in their case was made, that they were stripped of nearly everything. Others who were deemed poor in the morning found themselves, by the decision, men of wealth in the evening. Of course, a great deal of feeling was produced by the decisions rendered. Those who were successful in their litigations found that the courts had only performed their duty in the decisions they had rendered. Those against whom the decisions were rendered could not be satisfied without imputing to the Judges, in many instances, dishonorable and dishonest motives. Therefore it was that all judicial officers of California who were called upon to pass upon titles to lands and to settle controversies in which large amounts were involved, were, in many cases, subjected to gross and unfounded imputations. But the cases mentioned are the only ones recalled in which violence was resorted to against the Judge for any of his decisions.

The appreciation by the court for its associate, Justice Field, has ever been, not only kind and courteous, but marked with expressions of great consideration. When the late Chief Justice Waite died, his associates recommended Justice Field as his successor. In no instance has so great a mark of consideration been extended by Justices of the court to one of its own number. But the President seemed to consider that a rule, which has heretofore prevailed in the court, with but one exception, of desig-

nating a member of the bar and not an associate of the court, to be its Chief Justice, should govern him, and he passed by the recommendation of the associates of Justice Field. The exceptional case referred to was that of Associate Justice Cushing being appointed by Washington as Chief Justice, but he declined to take the place on account of his age and impaired health. In no other instance has an Associate Justice ever been appointed.

The following letters from Justice Bradley and Justice Matthews to Mr. Field, shows the sentiments of the court. On the day that the nomination of Mr. Fuller as Chief Justice to succeed Mr. Waite was made, Justice Bradley wrote to Justice Field a letter on the nomination, giving his estimate of the persons who had previously filled this office, and adding:

"It is greatly to be lamented that a popular prejudice, fostered, no doubt, by those who would profit by it, should exist, as it seems to do, against the promotion of an Associate Justice to the place of Chief Justice of the Supreme Court. The Associate Justices are generally selected with as much anxiety on the part of the Executive to procure fitness and ability for the place as can possibly be exercised in the selection of a Chief Justice; and if, when a Chief Justice is to be appointed, they are passed by, and a man is imported into the court, without the experience in general and Federal jurisprudence and in the business of the court, which they are presumed to possess, it can only be justified by the selection of a man who can bring to the court the prestige of eminence already acquired in statesmanship and knowledge of public law and public affairs. Qualities of this kind are of great assistance in the deliberations which the Supreme Court is often called upon to give to the questions that come before it for adjudication. When such a selection is made, neither the public nor the court has, or can have, a word of complaint to utter. It has a fitness which challenges the approbation of all sensible men. But when such a man is not, or cannot be found, or is not readily available for Executive selection, how senseless and absurd it is to decry an appointment from the bench itself, especially when, by universal acknowledgment, it can furnish more than one

member not wanting in any requisite for the distinguished place to be filled, and when, as in the present case, there is entire harmony in the bench itself as to the appointment that should be made. I think, my dear Judge, that I am not mistaken in saying that every member of the court (yourself excluded) earnestly desired your appointment, and most, if not all, of them distinctly signified to the President their wish to this effect. He had the frankness to concede the general correctness of our views, as I have stated them above, looking, as they did, to the continued high standing of the court in public estimation, and gave assurance that if he did not select a member of the bench, he would make such a selection as would commend itself to the court as well as to the public. . . . .

"But, my dear Judge, you cannot be deprived of the satisfaction of knowing that if your associates could have controlled the appointment, you would have been Chief Justice to-day. You would have had not only the suffrages of your brethren on the bench, but I have good reason to believe that your confirmation by the Senate would have been prompt and unanimous.

"Yours, sincerely,

(Signed) "JOSEPH P. BRADLEY."

As the Justices of the court were about to separate, Mr. Justice Matthews addressed to Justice Field the following letter:

"WASHINGTON, D. C., *June* 19, 1888.

"MY DEAR JUDGE FIELD:

"We are about to part for the summer, and I may not have an opportunity of saying good-bye in person before the day of your departure. I take this method, therefore, of wishing yon a safe journey to your circuit, a pleasant vacation, and your prompt return at the appointed time with renewed health and vigor. May I add the wish that you were coming back as Chief Justice? I wish I could call it a hope. I certainly did cherish the desire, when it became proper to consider the question of filling the vacancy, that the administration would find in your promotion the readiest and most satisfactory mode of promoting the public interest. And such I know was the general feeling on the part of your brethren on the bench, and that without disparagement to others spoken of as competent to fill the great and dignified

position of Chief Justice. It is natural, perhaps, that we should think one, who had for so many years and so worthily discharged the functions of an Associate Justice, by reason of that experience, better fitted to preside over the court in which he had so honorably served.

"With best wishes for you now and always, I am,

"Your friend,

(Signed) "STANLEY MATTHEWS.

"MR. JUSTICE FIELD, Washington, D. C."

At the centennial celebration of the organization of the Supreme Court, which took place in New York on the 4th of February, 1889, there was an immense gathering of great lawyers, eminent judges, and men distinguished in different departments of life for honorable public services, from all parts of the country. Mr. Justice Field was selected by his associates to reply, on behalf of the court, to the addresses which were made on that occasion. It is sufficient to say that the Justices were satisfied and pleased with the manner in which he discharged his duty. His reply is published in the Appendix to the 134th volume of the United States Supreme Court Reports.

In 1865, Mr. Field received the degree of LL. D. from his old *alma mater*, Williams College. He has been at different times invited to speak at its commencements, either in an address to its alumni or to its students, but has declined, from the fact that the effort to remain standing during an address of ordinary length would be too fatiguing, owing to his lameness, and not from want of affection or respect to his old *alma mater*.

In 1869 he was appointed Professor of Law in the University of California. In accepting it he doubted whether he would be able, during his continuance on the bench, to deliver any lectures or to hear recitations of any classes, but he intended to retire from the bench at the age of seventy, and to devote the remainder of his life to the duties of the professorship. Subsequent events prevented the carrying out of this purpose.

He is now seventy-six years of age, November 4, 1892, and, from his vigorous health, has the prospect of some years more on the bench. On the 13th of October, the length of his service on the Supreme bench of California and the bench of the Supreme Court of the United States, together, amounted to thirty-five years.

The labors of Judge Field on the bench of the Supreme Court of California contributed greatly, as already stated, to the settlement of land titles in that State. After he went on the bench of the Supreme Court of the United States and removed to Washington, he took great interest in the legislation of Congress which in any way tended to the quiet and security of titles in that State. In two instances his influence in that direction was marked. As stated above, there was great confusion and uncertainty in the titles of lands within the limits of the city of San Francisco. As successor of the Mexican pueblo, it claimed title to four square leagues of land upon which the city was situated. Many citizens relied upon grants from the alcaldes of the pueblo, and many asserted title from possession merely. The United States considered all the land, not granted previous to the cession of California, as part of the public domain. To quiet the possession of occupants, so far as the pueblo title was concerned, the common council of the city of San Francisco passed the ordinance known from the name of its author as the "Van Ness Ordinance." It was approved by an act of the legislature of the State in March, 1858. Of course, if the title was in the United States this confirmatory action of the legislature was inoperative. But doubt as to the efficacy of the confirmation from that source was removed by the act of Congress of July 1, 1864, to expedite the settlement of titles to lands in the State of California. (13 Stat. chap. 194.) That act was introduced into Congress and its passage secured by Senator Conness, of California, who always took a deep interest

in everything that tended to the advancement of the State, and he thought that nothing would do more for its prosperity than giving security to titles to lands. In framing the act he consulted Judge Field, and, at his suggestion, inserted section five, which the Judge drafted, but without the proviso, which was added at the request of the Commissioner of the Land Office. By that section all the right and title of the United States to the lands within the corporate limits of San Francisco, as defined by its charter of 1851, were, with certain exceptions, relinquished and granted to the city and its successors, for the uses and purposes specified in the "Van Ness Ordinance." The holders of grants from alcaldes of the pueblo, and the occupants of lands within the limits of the charter of 1851, were thus quieted in their possessions. Subsequently, when, upon the decision in the Circuit Court of the "Pueblo Case," its claim to four square leagues of land was confirmed, appeals were taken to the Supreme Court, both by the United States and by the city; by the United States from the whole decree, and by the city from so much of it as included certain reservations in the estimate of the quantity of land confirmed. Whilst the appeals were pending in that court, Congress, on the 8th of March, 1866, passed an act relinquishing and granting to the city, all the right and title of the United States to the land confirmed, subject, however, to the reservations and exceptions designated, and upon the trust that all the land, not previously granted by the city, should be conveyed to parties in the *bona fide* actual possession thereof, by themselves or tenants, on the passage of the act, in such quantities and upon such terms and conditions as the Legislature of the State of California might prescribe, except such parcels as might be reserved and set apart for public uses. This act was drawn by Judge Field and introduced by Senator Conness, through whose exertions, and those of Senator Stewart, of Nevada, it was passed unanimously by Congress. The title of the city of San Francisco to its munic-

ipal lands rests, therefore, upon the decree of the court as ratified and confirmed by this act of Congress.

The Judge also drafted many sections of laws passed by Congress having for their object the removal of unnecessary obstructions to the administration of justice.

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